रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित

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WEEKLY

सं. 44] नई दिल्ली, अक्तूबर 27—नवम्बर 2, 2019, शनिवार/कार्तिक 5—कार्तिक 11, 1941

No. 44] NEW DELHI, OCTOBER 27— NOVEMBER 2, 2019, SATURDAY/KARTIKA 5— KARTIKA—11, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 10 अक्तूबर, 2019

का.आ. 1888.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड.) के उप-खंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, उद्योग संवर्धन और आंतरिक व्यापार विभाग में वरिष्ठ आर्थिक सलाहकार श्री आनंद सिंह भाल को तत्काल प्रभाव से और अगले आदेशों तक श्री रमेश अभिषेक के स्थान पर भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के निदेशक मण्डल में निदेशक नामित करती है।

[फा. सं. 9/16/2012-आईएफ-I]

सौम्यजित घोष, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 10th October, 2019

S.O. 1888.—In exercise of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Shri Anand Singh Bhal, Senior Economic Adviser, Department for Promotion of Industry and Internal Trade, as Director on the Board of

Directors of Export Import Bank of India (EXIM Bank) *vice* Shri Ramesh Abhishek with immediate effect and until further orders.

[F. No. 9/16/2012-IF-I]
SOUMYAJIT GHOSH, Under Secy.

(व्यय विभाग)

नई दिल्ली, 23 अक्तूबर, 2019

का. आ. 1889.—केंद्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, भारत सरकार के भारतीय लेखापरीक्षा एवं लेखा विभाग के निम्नलिखित कार्यालयों को जिसमें अस्सी प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतदद्वारा अधिसूचित करती है, अर्थात:-

1. महानिदेशक, लेखापरीक्षा, नौ सेना, नई दिल्ली।

2. प्रधान निदेशक वाणिज्यिक लेखापरीक्षा एवं पदेन सदस्य, लेखापरीक्षा बोर्ड-IV नई दिल्ली, शाखा कार्यालय कोलकाता।

3. महालेखाकार (लेखा व हकदारी) केरल, शाखा कार्यालय, कोट्टयम तिरुवनंतपुरम।

4. प्रधान निदेशक लेखापरीक्षा (केंद्रीय), हैदराबाद।

5. प्रधान निदेशक लेखापरीक्षा (केंद्रीय), लखनऊ।

6. प्रधान निदेशक लेखापरीक्षा (केंद्रीय), लखनऊ शाखा कार्यालय रांची।

7. प्रधान निदेशक लेखापरीक्षा (केंद्रीय), लखनऊ शाखा कार्यालय पटना एवं

8. प्रधान निदेशक लेखापरीक्षा (केंद्रीय), लखनऊ शाखा कार्यालय इलाहाबाद।

[सं. ए–12034/02/2014-ई. जी.)

ऐनी जॉर्ज मैथ्यू, अपर सचिव

(Department of Expenditure)

New Delhi, the 23rd October, 2019

S.O. 1889.—In pursuance of sub- rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Government of India in the Indian Audit and Accounts Department, in which eighty per cent. of the staff have acquired the working knowledge of Hindi, namely:-

1. Director General of Audit (Navy), New Delhi,

2. Principal Director of Commercial Audit and Ex- office Member, Audit Board –IV New Delhi, Kolkata Branch Office;

3. Accountant General (Accounts and Entitlements) Kerala, Branch office Kottyam Thiruvananthapuram;

4. Principal Director of Audit (Central), Hyderabad;

5. Principal Director of Audit (Central), Lucknow;

6. Principal Director of Audit (Central), Lucknow, Branch Office Ranchi;

7. Principal Director of Audit (Central), Lucknow, Branch Office Patna;

8. Principal Director of Audit (Central), Lucknow, Branch Office Allahabad.

[No. A-12034/02/2014-EG]

ANNIE GEORGE MATHEW, Addl. Secy.

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 28 अक्तूबर, 2019

का.आ. 1890.—बीमांकक अधिनियम, 2006 (2006 का 35) की धारा 26 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री अंशुमन शर्मा, उप सचिव, वित्तीय सेवाएं विभाग को तत्काल प्रभाव से और अगले आदेशों तक श्री संजय कुमार, निदेशक, वित्तीय सेवाएं विभाग के स्थान पर भारतीय बीमांकक संस्थान परिषद द्वारा गठित अनुशासनात्मक समिति के सदस्य के रुप में नामित करती है।

[फा. सं. 97(11)/2003-बीमा-III]

उमेश चन्द्र, अवर सचिव

(Department of Financial Services)

New Delhi, the 28th October, 2019

S.O. 1890.—In exercise of the powers conferred by sub-section (1) of section 26 of the Actuaries Act, 2006 (35 of 2006) the Central Government hereby nominates Sh. Anshuman Sharma, Deputy Secretary, Department of Financial Services as a member of the Disciplinary Committee constituted by the Council of the Institute of Actuaries of India vice Sh. Sanjay Kumar, Director, DFS with immediate effect and until further orders.

[F. No. 97(11)/2003-Ins.III]

UMESH CHANDRA, Under Secy.

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1891.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना (केंद्रीय अन्वेषण ब्यूरो) द्वारा श्री प्रमोद कुमार श्रीवास्तव, अधिवक्ता को मुख्य न्यायिक मजिस्ट्रेट, चंदौली के न्यायालय में वाद सं. आरसी 7(एस)/2010, आरसी 8(एस)/2010, आरसी 9(एस)/2010 सीबीआई, एससीबी और अपर सत्र न्यायाधीश एफटीसी-IV, वाराणसी के न्यायालय में वाद सं. आरसी 10(एस)/1999/सीबीआई/लखनऊ के मामलों और उससे संबंधित या आनुषंगिक मामलों के विचारण का संचालन करने के लिए उनकी नियुक्ति से तीन वर्ष की अवधि के लिए या इन मामलों के निपटान तक, इनमें से जो भी पूर्वत्तर हो, विशेष लोक अभियोजक नियुक्त करती है।

[फा. सं. 225/12/2019-एवीडी-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 31st October, 2019

S.O. 1891.—In pursuance of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri. Pramod Kumar Srivastava, Advocate as Special Public Prosecutor for conducting the trial in cases No.RC 7(S)/2010, RC8(S)/2010, RC 9(S)/2010 CBI, SCB Lucknow in the court of Chief Judicial Magistrate, Chandauli and RC 10/99/CBI/Lucknow in the court of Additional, Session Judge FTC-IV, Varanasi on behalf of Delhi Special Police Establishment (CBI) and for matters connected therewith or incidental thereto for a period of three years from the date of appointment or disposal of the cases , whichever is earlier.

[F. No. 225/12/2019-AVD-II]

S. P. R. TRIPATHI, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 31 अक्तूबर, 2019

का.आ. 1892.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 108, दिनांक 10 जनवरी 2019, भारत के राजपत्र संख्या 3, दिनांक 13 जनवरी 2019 से 19 जनवरी 2019, में प्रकाशित की गई थी और अधिसूचना संख्या का.आ. 1127, दिनांक 24 जून 2019, भारत के राजपत्र संख्या 27, दिनांक 30 जून 2019 से 6 जुलाई 2019, में प्रकाशित की गई थी | इन अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में झारखंड राज्य में "हल्दिया-बरौनी पाइपलाइन सिस्टम्स परियोजना" जिला जमताडा में कच्चे तेल के परिवहन हेतु इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के लिए उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी |

और उक्त राजपत्र अधिसूचना की प्रतियाँ जनता को दिनांक 04 अगस्त 2019 तक उपलब्ध करा दी गई थी,

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को रिपोर्ट दे दी है,

और केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात और यह समाधान हो जाने पर कि उक्त भूमि पाइपलाइन बिछाने के लिए अपेक्षित है, उसमें उपयोग के अधिकार का अर्जन करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत शक्तियों का प्रयोग करते हुए यह घोषणा करती है की इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के लिए उपयोग के अधिकार का अर्जन किया जाए;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि उक्त भूमि में उपयोग के अधिकार इस घोषणा के प्रकाशन की दिनांक से केन्द्रीय सरकार में निहित होने के बजाए, सभी विल्लंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगी

पेट्रोलियम और खनिज पाइपलाइंन अधिनियम,1962 की धारा 10 के अधीन किसी भी क्षतिपूर्ति के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड पूर्णतया उतरदाई होगा और पाइपलाइन से संबन्धित किसी भी मामले पर केन्द्रीय सरकार के विरुद्ध कोई दावा या कानूनी कार्यवाही नहीं हो सकेगी

अनुसूची

जिला : जमताडा			**राज्य : झारखंड**		
तहसील	**गाँव**	**सर्वे नम्बर**	**क्षेत्रफल**		
			हेक्टेयर	**एयर**	**वर्ग मीटर**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**
फतेहपुर	सेमुलडुबी - 12	622	00	00	28
		618	00	00	20
		617	00	00	84
		616	00	02	73
		615	00	00	20
		628	00	02	06
		629	00	01	61

(1)	(2)	(3)	(4)	(5)	(6)
फतेहपुर	सेमुलडुबी - 12	645	00	00	90
		644	00	00	20
		646	00	02	57
		647	00	01	98
		648	00	03	79
		649	00	01	62
		602	00	01	21
		601	00	01	52
		596	00	01	22
		595	00	00	33
		597	00	01	45
		594	00	01	47
		593	00	00	20
		592	00	00	26
		591	00	00	87
		565	00	00	18
		590	00	02	06
		589	00	00	75
		566	00	01	72
		567	00	02	16
		568	00	03	75
		419	00	01	02
		417	00	00	38
		418	00	02	17
		422	00	02	86
		423	00	00	81
		424	00	00	20
		425	00	00	20
		427	00	03	48
		406	00	00	75
		399	00	11	28
		331	00	02	39
		334	00	03	80
		333	00	04	33
		326	00	07	23
		327	00	01	24

(1)	(2)	(3)	(4)	(5)	(6)
फतेहपुर	सेमुलडुबी - 12	146	00	02	34
		273	00	02	89
		272	00	13	91
		248	00	04	31
		247	00	00	29
		246	00	02	54
		245	00	01	27
		244	00	01	16
		243	00	01	08
		242	00	00	20
		241	00	01	14
		240	00	02	09
		254	00	01	08
		239	00	01	60
		236	00	00	20
		238	00	02	84
		217	00	01	05
		151	00	00	20
		216	00	00	52
		152	00	08	07
		215	00	00	53
		154	00	02	12
		155	00	00	20
		17	00	00	20
		16	00	04	74
		15	00	01	76
		12	00	02	15
		11	00	01	04
		13	00	02	38
		8	00	00	82
		1	00	04	09
		2	00	02	52

[फा. सं. आर-11025(11)/21/2018-ओआर-I/ई-27764]

पी. सोमाकुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 31st October, 2019

S. O. 1892.—Whereas by the notification of the Government of the India in the Ministry of Petroleum and Natural Gas S. O. No. 108 Dated 10th January, 2019 and S.O No.1127 Dated 24th June, 2019 ,published in the Gazette of India No. 3 dated 13th January to 19th January, 2019 and Gazette of India No. 27 dated 30th June to 6th July, 2019 respectively, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), published in the Gazette of India, the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to that notification for the purpose of laying "Haldia - Barauni Pipeline Systems Project" for the transportation of Crude Oil in Jamtara District in the State of Jharkhand by Indian Oil Corporation Limited;

And whereas copies of the said Gazette notification were made available to the public up to 4th August 2019.

And whereas the competent authority has under sub-section (1) of section 6 of the said Act submitted report to the Central Government;

And Whereas the central Government, after considering the said report and on being satisfied that the said land is required for laying the pipeline, has decided to acquire right of user therein;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest on the date publication of the declaration, in Indian Oil Corporation Limited, free from all encumbrances.

Indian Oil Corporation Limited shall be exclusively liable for any compensation in terms of Section 10 of the P&MP Act, 1962 and no suit, claim or legal proceeding would lie against the Central Government on any matter relating to the pipeline.

SCHEDULE

District : JAMTARA			State : JHARKHAND		
Tehsil	Village	Survey No.	Area		
			Hectare	Are	Square Metre
(1)	(2)	(3)	(4)	(5)	(6)
FATEHPUR	SEMLDUBI - 12	622	00	00	28
		618	00	00	20
		617	00	00	84
		616	00	02	73
		615	00	00	20
		628	00	02	06
		629	00	01	61
		645	00	00	90
		644	00	00	20
		646	00	02	57
		647	00	01	98
		648	00	03	79
		649	00	01	62
		602	00	01	21
		601	00	01	52
		596	00	01	22
		595	00	00	33
		597	00	01	45
		594	00	01	47
		593	00	00	20
		592	00	00	26
		591	00	00	87
		565	00	00	18

(1)	(2)	(3)	(4)	(5)	(6)
FATEHPUR	SEMLDUBI - 12	590	00	02	06
		589	00	00	75
		566	00	01	72
		567	00	02	16
		568	00	03	75
		419	00	01	02
		417	00	00	38
		418	00	02	17
		422	00	02	86
		423	00	00	81
		424	00	00	20
		425	00	00	20
		427	00	03	48
		406	00	00	75
		399	00	11	28
		331	00	02	39
		334	00	03	80
		333	00	04	33
		326	00	07	23
		327	00	01	24
		146	00	02	34
		273	00	02	89
		272	00	13	91
		248	00	04	31
		247	00	00	29
		246	00	02	54
		245	00	01	27
		244	00	01	16
		243	00	01	08
		242	00	00	20
		241	00	01	14
		240	00	02	09
		254	00	01	08
		239	00	01	60
		236	00	00	20
		238	00	02	84
		217	00	01	05
		151	00	00	20
		216	00	00	52
		152	00	08	07
		215	00	00	53
		154	00	02	12
		155	00	00	20
		17	00	00	20
		16	00	04	74
		15	00	01	76
		12	00	02	15
		11	00	01	04
		13	00	02	38
		8	00	00	82
		1	00	04	09
		2	00	02	52

[F. No. R-11025(11)/21/2018-OR-I/E-27764]

P. SOMAKUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 23 अक्तूबर, 2019

का.आ. 1893.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कुलपति, रक्षा प्रौद्योगिकी संस्थान, गिरिनगर, पुणे और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 36/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.10.2019 को प्राप्त हुआ था।

[सं. एल-42012/24/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 23rd October, 2019

S.O. 1893.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbaias shown in the Annexure, in the Industrial dispute between the employers in relation to The Vice Chancellor, Defence Institute of Advanced Technology, Girinagar, PUNE & Others, and their workmen which were received by the Central Government on 14.10.2019.

[No. L-42012/24/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/36 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF DEFENCE INSTITUTE OF ADVANCED TECHNOLOGY

The Vice Chancellor,
Defence Institute of Advanced Technology,
Girinagar,
PUNE – 411 025.

AND

THEIR WORKMEN

Shri Ramesh ArjunSonawane,
137/4, R.K. NaikChawl,
Dr. BabasahebAmbedkarChowk,
Bopodi,
PUNE – 411 020.

APPEARANCES:

FOR THE EMPLOYER	:	Mr. M. B. Anchan, Advocate
FOR THE WORKMEN	:	Mr. J. H. Sawant, Advocate

Mumbai, dated the 16th September, 2019.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour& Employment, New Delhi vide its order No. L-42012/24/2014 – IR (DU) dated 28.05.2014. The terms of reference given in the schedule are as follows :

> "*Whether the action of the management of Defence Institute of Advanced Technology, Girinagar Pune in terminating the service of Shri Ramesh A. Sonawane, Fire Supervisor w.e.f. 30.6.2013 is legal and justified ? If not to what relief the workman is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. The concerned workman filed statement of claim Ex.6.According to the concerned workman he was in continuous employment of the first party w.e.f. 24.12.08 to 30.6.13. He was working in Fire Section in the post of Fire Supervisor against the permanent vacancy and was attending the permanent nature of work. He was employed by Defence Institute of Advanced Technology, Girinagar, Pune in the post of Fire Supervisor w.e.f. 24.12.08 in Fire Section for safety of Girinagar station including the estt. of first party. Fire Section of the first party was given under the Administrative control of Military Institute of Technology in the year 2012 without any change in the responsibilities and liabilities of the first party towards second party. The employment for the Fire Section was regularized and monitored by second party. Management of MILIT by its letter dt. 7.6.13 requested the first party to extend the period of service of the second party beyond 30.6.13 as per the requirement of the work. However, the first party without following the provisions of law as well as principles of natural justice terminated his services w.e.f. 30.6.13.

4. It is thus case of the concerned workman that the first party violated the provisions of law including the provisions made u/s. 25 F of I.D. Act. As such the action of first party in terminating the services of the second party w.e.f. 30.6.13 is illegal and unjustified. The second party workman is therefore asking reinstatement in service w.e.f. 30.6.13 with continuity of service, full back wages and all consequential benefits.

5. First party resisted the claim by filing say Ex.7 contending therein that the concerned workman was initially engaged as Fire Supervisor on contract basis w.e.f. 5.3.10 for six months on consolidated monthly remuneration of Rs.7500/- p.m. He was further engaged during the following spells against temporary requirements.

a) 24th Sept. 2010 to 23rd Jan 2011;

b) 04th Feb. 2011 to 03rd May 2011;

c) 11th May 2011 to 10th Nov 2011;

d) 18th Nov 2011 to 17th May 2012;

e) 24th May 2012 to 23rd Dec 2012;

f) 01st Jan 2013 to 30th June 2013.

6. It is thus case of the first party that the concerned workman had submitted an agreement and undertaking stating that he will not claim regular appointment on the ground that he has been given contractual appointment and agreed to abide the rules & regulations of the Institute. In March 2012 the unit namely MILIT, Pune was raised within the premises and the assets & liabilities pertaining to DIAT has been segregated between MILIT and DIAT. The Fire section where the concerned workman was serving had come under the Administrative control of MILIT Pune as DIAT ceased to have control over the Fire section. Further extension of contractual engagement from DIAT was not possible. The first party has thus sought dismissal of reference.

7. Following issues are framed at Ex.8. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the action of the management in terminating the services of Shri Ramesh A. Sonawane, Fire Supervisor is legal and justified ?	Yes
2.	If not, whether the workman is entitled to be reinstated in service with full back-wages and continuity of service as prayed for ?	No
3.	What Order ?	As per final order

Reasons

Issue No.1 :-

8. So far contentions go, the concerned workman in statement of claim has contended that he was in continuous employment of the first party from 24.12.08 to 30.6.13. In this respect if we see the evidence of the concerned workman, he admits in his cross examination that he was working as Fire Supervisor w.e.f. 24.12.08 and admittedly his appointment was on contract basis. His glaring admission shows that he was not given continuous appointment. His second appointment was for the period from 24.9.10 till 23.1.11. It appears therefore from the evidence of concerned workman itself that his appointment was on contract basis. He was never given continuous appointment and therefore his evidence in the context goes to the root of matter.

9. Even otherwise we have document to show that he was selected by the appointing authority for the appointment to the post of Fire Supervisor on contract basis. Office order Ex.47 clearly mentions that the tenure of the contractual post of the concerned workman was of 179 days from the date of appointment i.e. 24.12.08. Subsequent orders Ex.52, Ex.53 would show that all the while his appointment was on contract basis for the particular period mentioned in that order and that his appointment was subject to submission of contractual agreement for that period. As such there was contractual agreement showing that the concerned workman has accepted the terms & conditions of contractual agreement. Even in his cross examination the concerned workman has accepted that he has given undertaking to the effect that he will not claim continuous appointment. Subject to this contractual agreement he was appointed on temporary basis i.e. on contractual basis on consolidated monthly remuneration of Rs.7500/- p.m.

10. Precisely this is the evidence of Mr. MadhavPathak who has categorically stated that the concerned workman was appointed as Fire Supervisor against temporary requirement on temporary basis i.e. on contractual basis on consolidated monthly remuneration of Rs.7500/- p.m. from 5.3.10 for six months and thereafter for the subsequent period as follows:

a) 24th Sept. 2010 to 23rd Jan 2011;

b) 04th Feb. 2011 to 03rd May 2011;

c) 11th May 2011 to 10th Nov 2011;

d) 18th Nov 2011 to 17th May 2012;

e) 24th May 2012 to 23rd Dec 2012;

f) 01st Jan 2013 to 30th June 2013.

11. Even the cross examination of this witness Mr. MadhavPathak does not blow of his version and he has made it clear that the first party has entered into contract of employment with the second party on temporary basis as per terms of contract. It will have to be said therefore that the second party workman was appointed on temporary basis as per the requirement subject to the agreement to the effect that he would not claim continuous appointment and that his appointment will remain valid for the period for which he was appointed and that this appointment will automatically terminate on the date of its expiry without any notice.

12. Even then the Learned Counsel for the concerned workman urged that the contractual appointment is mere device used by the first party to deprive the second party of the rights & benefits to which he was entitled under Labour Welfare Legislation. Submission is to the effect that management of MILIT by its letter dt. 7.6.13 requested the first party to extend the period of service of the second party beyond 30.6.13 but it was not done and that itself amounts to unfair labour practice as well the violation of provisions of law.

13. Learned Counsel for the concerned workman seeks to rely on the decision in case of BhilwadaDudhUtpadak Society Ltd. V/s. Vinod Kumar Sharma [Dead] by LR &Ors. – 2011 – III – CLR – 386. In that case there was finding of the Labour court which was based on evidence on record and it has upheld by the Hon'ble HC. Labour court has held that the workmen were the employees of the appellant i.e. BhilwadaDudhUtpadak Society Ltd. and not the employee of the contractor and that he was working under the orders of the appellant. In that circumstances it was considered that there was subterfuge by the appellant to avoid its liabilities under various Labour courts.

14. Here in the instant case the facts are quite distinct & distinguishable. The concerned workman in his evidence itself has accepted that he was appointed on contract basis and that he was not given continuous appointment.

15. Next submission of Learned Counsel for the concerned workman is that the services of the concerned workman are terminated in violation of provisions of I.D. Act. For, it is explicit, from the evidence of concerned workman itself that in 2012 Fire Section of the first party was given under the administrative control of MILIT. So Fire Section and departmental canteen was under the management of MILIT since 2012. Since these two units i.e. Fire Section and departmental canteen ceased to be with DIAT, the management of DIAT ceased to have control over the concerned

workman. Obviously, therefore DIAT did not require the services of the concerned workman. This being the contractual appointment and not the continuous appointment after the period of contract comes to an end the services of the concerned workman will automatically come to an end. So that is ceasation of service due to expiry of contract period with the contractual term ending and the canteen was not with the first party, the first party has no jurisdiction on the matter any further and therefore there was no termination of services of the concerned workman by the first party but then his services came to an end by efflux of time. It cannot be said therefore that the services of the concerned workman are terminated in violation of any provisions of I.D. Act or that his termination is unlawful.

16. Learned Counsel for the concerned workman seeks to rely on the decision in case of S.G. Chemical & Dyes Trading Employees' Union – 1986 – LAB – IC – 863. He has also placed the reliance on the decision in case of Raghuvir Singh V/s. G.M. Haryana Roadways Hisa – 2014 – III – CLR – 522. The observations in cited dictum does not help the concerned workman since from the facts in the present case he was appointed on contractual basis and after expiry of contract period his services came to an end.

17. In the circumstances, Learned Counsel for the first party reiterates that the agreement of contract was a normal procedure to record the mutual obligations of either parties for clarity and execution. There was contractual agreement and the concerned workman was never in the employment of the management of first party. I find substance in the submission of Learned Advocate for the first party from the evidence on record.

18. Considering all these facts I find that the concerned workman was appointed purely on temporary & contractual basis. His appointment came to an end automatically by efflux of time without any notice and therefore the action of management in terminating his services is legal & justified. Issue No.1 is therefore answered accordingly as indicated against it.

Issue No. 2 & 3 :-

19. In view of my finding to issue No.1, the concerned workman is not entitled to be reinstated in service with full back wages & continuity of service etc. He is not entitled to any relief. Hence Issue No.2 & 3 are answered accordingly. In the result I pass the following order.

ORDER

Reference is rejected with no order as to costs.

Date: 16.09.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 23 अक्तूबर, 2019

का.आ. 1894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स कमांडेंट और निदेशक, रक्षा प्रौद्योगिकी संस्थान, गिरिनगर, पुणे और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 37/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.10.2019 को प्राप्त हुआ था।

[सं. एल-42012/25/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 23rd October, 2019

S.O. 1894.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Commandant and Director, Defence Institute of Advanced Technology, Girinagar, PUNE & Others, and their workmen which were received by the Central Government on 14.10.2019.

[No. L-42012/25/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/37 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF DEFENCE INSTITUTE OF ADVANCED TECHNOLOGY

The Commandant and Director,
Defence Institute of Advanced Technology,
(Deemed Univerty), Girinagar,
PUNE – 411 025.

AND

THEIR WORKMEN

Shri Rohidas Balwant Lonari,
AmrutaVihar, Flat No. A-1/12,
Opp CW & PRS Gate, Kirkatwadi,
Sinhagad Road,
PUNE – 411 024.

APPEARANCES:

FOR THE EMPLOYER : Mr. M. B. Anchan, Advocate

FOR THE WORKMEN : Mr. J. H. Sawant, Advocate

Mumbai, dated the 17th September, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour& Employment, New Delhi vide its order No. L-42012/25/2014 – IR (DU) dated 28.05.2014. The terms of reference given in the schedule are as follows :

> "*Whether the action of the management of Defence Institute of Advanced Technology, Girinagar Pune in terminating the service of ShriRohidasBalwantLonari, Canteen Manager w.e.f. 30.6.2013 is legal and justified ? If not to what relief the workman is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. The concerned workman filed statement of claim Ex.5.According to the concerned workman he was in continuous employment of the first party w.e.f. 24.9.09 to 30.6.13. He was working in his departmental canteen in the post of Canteen Manager against the permanent vacancy and was attending the permanent nature of work. However, the first party without following the provisions of law as well as principles of natural justice terminated his services w.e.f. 30.6.13.

4. It is thus case of the concerned workman that the first party violated the provisions of law including the provisions made u/s. 25 F of I.D. Act. As such the action of first party in terminating the services of the second party w.e.f. 30.6.13 is illegal and unjustified. The second party workman is therefore asking reinstatement in service w.e.f. 30.6.13 with continuity of service, full back wages and all consequential benefits.

5. First party resisted the claim by filing say Ex.6 contending therein that the concerned workman was initially engaged as Canteen Manager on contract basis w.e.f. 24.9.09 for six months on consolidated monthly remuneration of Rs.9000/- p.m. It was decided by the competent authority to re-fix the consolidated remuneration of all contractual employees engaged as Lab Assistant, Office Assistant & Canteen Manager from the existing Rs.9000/- p.m. to Rs.7500/- p.m. He was further engaged during the following spells against temporary requirements.

a) 1st June 2010 to 30th Nov 2010;

b) 08th Dec. 2010 to 7th June 2011;

c) 16th June 2011 to 15th Oct 2011;

d) 17th Oct 2011 to 16th April 2012;

e) 14th May 2012 to 13th Nov 2012;

f) 01st Jan 2013 to 30th June 2013.

6. It is thus case of the first party that the concerned workman had submitted an agreement and undertaking stating that he will not claim regular appointment on the ground that he has been given contractual appointment and agreed to abide the rules & regulations of the Institute. In March 2012 the unit namely MILIT, Pune was raised within the premises and the assets & liabilities pertaining to DIAT has been segregated between MILIT and DIAT. The departmental canteen where the concerned workman was serving had come under the Administrative control of MILIT Pune as DIAT ceased to have control over the canteen department. Further extension of contractual engagement from DIAT was not possible. The first party has thus sought dismissal of reference.

7. Following issues are framed at Ex.7. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the action of the management in terminating the services of ShriRohidasBalwantLonari, Canteen Manager is legal and justified ?	Yes
2.	If not, whether the workman is entitled to be reinstated in service with full back-wages and continuity of service as prayed for ?	No
3.	What Order ?	As per final order

Reasons

Issue No. 1 :-

8. So far contentions go, the concerned workman in statement of claim has contended that he was in continuous employment of the first party from 24.9.09 to 30.6.13. In this respect if we see the evidence of the concerned workman, he admits in his cross examination that he was working as Canteen Manager w.e.f. 24.9.09 to 30.5.13 and admittedly his appointment was on contract basis. He was never given continuous appointment and therefore his evidence in the context goes to the root of matter.

9. Even otherwise we have document to show that he was appointed as Canteen Manager on contract basis to work in the departmental canteen, DIAT [DU] offer of contractual appointment letter. Office order clearly mentions that the tenure of the contractual post of the concerned workman was six months from the date of contractual appointment on monthly remuneration of Rs.9000/- p.m. Subsequently appointment orders Ex.17 & Ex.18 show that all the while his appointment was on contract basis for the particular period mentioned in the order and that his appointment was subject to submission of contractual agreement for that period. As such there was contractual agreement [Ex.19] showing that the concerned workman has accepted the terms & conditions of the contractual agreement. Even in his cross examination the concerned workman has admitted that he has given undertaking to the effect that he will not claim continuous appointment. Subject to this contractual agreement he was appointed on temporary basis on contractual basis on consolidated monthly remuneration of Rs.7500/- p.m.

10. Precisely this is the evidence of Mr. MadhavPathak who has categorically stated that the concerned workman was appointed as Canteen Manager against temporary requirement on temporary basis i.e. on contractual basis on consolidated monthly remuneration of Rs.7500/- p.m. He was further engaged during the following spells against temporary requirements.

a) 1st June 2010 to 30th Nov 2010;

b) 08th Dec. 2010 to 7th June 2011;

c) 16th June 2011 to 15th Oct 2011;

d) 17th Oct 2011 to 16th April 2012;

e) 14th May 2012 to 13th Nov 2012;

f) 01st Jan 2013 to 30th June 2013.

11. Even the cross examination of this witness Mr. MadhavPathak does not blow of his version and he has made it clear that the first party has entered into contract of employment with the second party on temporary basis as per terms of contract. It will have to be said therefore that the second party workman was appointed on temporary basis as per the

requirement subject to the agreement to the effect that he would not claim continuous appointment and that his appointment will remain valid for the period for which he was appointed and that this appointment will automatically terminate on the date of its expiry without any notice.

12. Even then the Learned Counsel for the concerned workman urged that the contractual appointment is mere device used by the first party to deprive the second party of the rights & benefits to which he was entitled under Labour Welfare Legislation. Submission is to the effect that management of MILIT by its letter dt. 7.6.13 requested the first party to extend the period of service of the second party beyond 30.6.13 but it was not done and that itself amounts to unfair labour practice as well the violation of provisions of law.

13. Next submission of Learned Counsel for the concerned workman is that the services of the concerned workman are terminated in violation of provisions of I.D. Act. For, it is explicit, from the evidence of concerned workman itself that in 2012 departmental canteen of the first party was given under the administrative control of MILIT. So Fire Section and departmental canteen was under the management of MILIT since 2012. Since these two units i.e. Fire Section and departmental canteen ceased to be with DIAT, the management of DIAT ceased to have control over the concerned workman. Obviously, therefore DIAT did not require the services of the concerned workman. This being the contractual appointment and not the continuous appointment after the period of contract comes to an end the services of the concerned workman will automatically come to an end. So that is ceasation of service due to expiry of contract period with the contractual term ending and the canteen was not with the first party, the first party has no jurisdiction on the matter any further and therefore there was no termination of services of the concerned workman by the first party but then his services came to an end by efflux of time. It cannot be said therefore that the services of the concerned workman are terminated in violation of any provisions of I.D. Act or that his termination is unlawful.

14. In the circumstances, Learned Counsel for the first party reiterates that the agreement of contract was a normal procedure to record the mutual obligations of either parties for clarity and execution. There was contractual agreement and the concerned workman was never in the employment of the management of first party. He further submits that when two units i.e. Fire Section & departmental canteen ceased to be with DIAT the institution DIAT ceased to be the employer. I find substance in the submission of Learned Advocate for the first party from the evidence on record.

15. Considering all these facts I find that the concerned workman was appointed purely on temporary & contractual basis. His appointment came to an end automatically by efflux of time without any notice and therefore the action of management in terminating his services is legal & justified. Issue No.1 is therefore answered accordingly as indicated against it.

Issue No.2 &3 :-

16. In view of my finding to issue No.1, the concerned workman is not entitled to be reinstated in service with full back wages & continuity of service etc. He is not entitled to any relief. Hence Issue No.2 & 3 are answered accordingly. In the result I pass the following order.

ORDER

Reference is rejected with no order as to costs.

Date: 17.09.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 23 अक्तूबर, 2019

का.आ. 1895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टेशन कमांडर, स्टेशन एच. क्यू. सैन्य शिविर, कोल्हापुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 39/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुए थे ।

[सं. एल-42012/31/2014-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 23rd October, 2019

S.O. 1895.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Station Commander, Station H. Q. Miltary camp, Kolhapur & Others, and their workmen which were received by the Central Government on 21.10.2019.

[No. L-42012/31/2014-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO.CGIT-2/39 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF E.C.H.S. CELL STATION H. Q.

The Station Commander,
Station H.Q. Miltary camp,
Tembalai hill,
Kolhapur.

AND

THEIR WORKMEN

Shri Sanjay D. Chanrankar,
C/o. Shankar M. Khot, Sainath Colony,
Near Astavinayak Colony,
Tembalaiwadi,
Kolhapur -.

APPEARANCES:

FOR THE EMPLOYER : Absent

FOR THE WORKMEN : Mr. P. Manish, Advocate

Mumbai, dated the 20th September, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour& Employment, New Delhi vide its order No. L-42012/31/2014 – IR (DU) dated 158.07.2014. The terms of reference given in the schedule are as follows :

> "*Whether the action of the management of ECHS Cell Station Headquarters, Kolhapur in orally terminating the service of ShriSanjay DagaduCharankar, w.e.f. 27.07.2010 is legal and justified ? If not, what relief the workman ShriSanjay DagaduCharankar is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. The concerned workman filed statement of claim Ex.3.According to the concerned workman the first party had advertised for recruitment of various posts including the post of Radiographer [i.e. Ex-Ray Technician] in the daily newspaper Pudhari dated 11.7.04. In response to the said advertisement he applied for the said post. Since he was eligible for the post of Radiographer, first party has invited him for interview on 21.7.04 and subsequently the first party appointed him on the post of Radiographer w.e.f. 15.9.04 vide order dt. 10.9.04. Accordingly, he joined to the post of Radiographer since from 15.9.04 and thereafter worked continuously without any break in the employment till 26.7.10. However, first party illegally and orally terminated his services w.e.f. 27.7.10 by restraining him to join his duties. He therefore requested the first party to continue him in employment vide representation dt. 2.8.10. However, his request was not considered by the first party.

4. He then raised the industrial dispute by sending demand notice dt. 11.10.10. The first party did not consider the said dispute positively. Second party therefore approached the concerned conciliation officer and requested to intervene in the dispute. The second party submitted his statement of justification dt.20.2.13 before conciliation officer in support

of his demand of reinstatement with continuity of service and back wages in the employment of first party. However the conciliation failed and the Central Govt. has sent the present reference vide their order dt.15.7.14 for adjudication.

5. According to the second party the nature of post of Radiographer is perennial & permanent in nature. The post on which he was appointed was a permanent vacant post with the first party Polyclinic. The first party has appointed him on the said post after adopting due process of recruitment. He has put in continuous service as understood by section 25 (b) of I.D. Act. He worked for more than 240 days every year / year to year since 15.9.04 till the end of his employment. He had worked continuously till the date of termination. As such the first party have illegally dis-continued him from services and terminated him from services illegally. He is therefore asking for declaration to the effect that the order of oral termination of the second party from services w.e.f. 27.7.10 is illegal and bad in law. He is also asking for his reinstatement in employment with continuity of service and with full back wages along with consequential benefits.

6. First party by filing reply Ex.4 opposed the statement of claim on the ground that the concerned workman was employed at ECHS Polyclinic Kolhapur as Radiographer purely on contract basis for various periods as per the details given below.

(a)	First Employment	15 Sep 2004 to 14 Aug 2005
(b)	Period not Employed	15 Aug 2005 to 16 Aug 2005
(c)	Second Employment	17 Aug 2005 to 16 Jul 2006
(d)	Period not Employed	17 Jul 2006 to 26 Jul 2006
(e)	Third Employment	27 Jul 2006 to 26 Jun 2007
(f)	Period not Employed	27 Jun 2007 to 30 Jun 2007
(g)	Fourth Employment	01 Jul 2007 to 30 Jun 2008
(h)	Period not Employed	01 Jul 2008 to 03 Jul 2008
(i)	Fifth Employment	04 Jul 2008 to 03 Jul 2009
(k)	Period not Employed	04 Jul 2009
(f)	Sixth Employment	05 Jul 2009 to 04 Jul 2010

7. There is no permanent appointment for the employees. 70% of the employees of ECHS Polyclinic have to be Ex-serviceman. When requisite percentage of Ex-serviceman under reservation quota are not available, the vacancies are to be filled by employing suitable civilians. Hence the service of the concerned workman were not extended by appointing authority after 5.7.10. The first party has thus sought rejection of reference.

8. Following issues are framed at Ex.8. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	**Issues**	**Findings**
1	Whether the First Party proves that the agreement with the 2nd Party Workmen is Legal ?	No
2.	Whether the 2nd Party Workmen proves that the termination was illegal, improper, unjust and bad in law ? Whether it deserves to be quashed and set aside ?	Yes
3.	Whether the 2nd Party Workmen proves that he is entitled to be reinstated with continuity of service, full back wages and / or any other consequential reliefs	Yes
4.	What Order ?	As per final order

Reasons

Issue No. 1, 2, 3 &4 :-

9. From the evidence of the concerned workman it is clear that the first party deployed the recruitment of the post including post of Radiographer and in pursuant to the said advertisement the concerned workman applied for the post of Radiographer. Since he was eligible for the said post, he was invited for the interview on 21.7.04 and subsequently he was appointed on the post of Radiographer w.e.f. 15.9.04 vide order dated 10.9.04. He joined on the post of Radiographer on 15.9.04.

10. In this respect we have document at Ex. A that the first party vide this letter informed to the concerned workman that he had been selected for the post of Radiographer at ECHS Polyclinic Kolhapur w.e.f. 15.9.04 for the period of 12 months and he was requested to get the agreement typed on non-judicial paper and deposit the same duly signed by him by 14.9.04. This would show that the concerned workman joined the post of Radiographer since from 15.9.04.

11. Even as per the say given by the first party, the concerned workman was employed as Radiographer on contract basis for various period and on going through the periods mentioned in the say it clearly appears that he worked with estt. from 15.9.04 to 4.7.10 without any break. This is precisely the evidence of the concerned workman that he worked continuously without any break in the employment till 26.7.10. This sort of evidence of the concerned workman has gone unchallenged as there is no cross examination directed against him. Management remained absent and hence there was no cross examination of the concerned workman.

12. Then it is clear from the evidence of the concerned workman that the nature of post of Radiographer is perennial & permanent. He was appointed on the post which was a permanent vacancy with the first party Polyclinic and hence he was appointed by the first party on the same post after adopting due process of recruitment. As such he was in continuous service with the first party on the said post since from 15.9.04 till 26.7.10 and also worked for more than 240 days every year / year to year. This sort of evidence is also unchallenged. Therefore it can be said that the concerned workman was continued in the employment for about six years with some nominal breaks which were shown to be on paper only but then infact he worked during the entire tenure without any break.

13. If that is the position, then the legal position is amply clear in the decision in case of SBI V/s. Union of India – 1989 – 75 FJR – 63. The respondent workman had been appointed on temporary basis as Guard-cum-messenger and in that capacity he continued in service of the bank for more than 240 days. At no stage any change was framed or any domestic enquiry was held in respect of allegations against him. He was not allowed to perform the duties from 26.11.75 on the basis of verbal order of the Manager. In the facts and circumstances of the case it was held that there has been termination within the meaning of section 2 (oo) of the act as there has been no dispute that the requirement of section 25 F of the act had not been complied with by the petitioner bank. Irresistible conclusion would be that the service of the workman had been terminated in contravention of mandatory requirement of section 25 F of the act which shall render the termination of the respondent illegal and invalid.

14. Here in the instant case the concerned workman in his evidence has stated that without any notice the first party orally terminated his service w.e.f. 27.7.10 by restraining him to join the duties orally when concerned workman has put in continuous service as understood by section 25 (b) of I.D. Act and has worked for more than 240 days every year / year to year since from 15.9.04 till the date of employment. He had not been issued any memo, charge sheet, show cause notice or no action has been against him then the oral termination of his service is deemed to be retrenchment as understood by section 2 (oo) of I.D. Act

15. Besides, the fact remains that one months notice pay & compensation as per section 25 F (a) (b) has not been given to him before he was asked to go. Compliance of section 25 F (a) (b) is mandatory and non-compliance thereof renders the retrenchment of employee nullity. In the context reference is placed to the decision in the case of Anup Sharma V/s. Executive Engg., Public Health Division No.1, Panipat, Haryana – 2010 – II – CLR – 1.

16. It appears from the say of the first party that the concerned workman has executed an agreement duly signed by him on 14.9.04 and therefore he cannot claim continuous service in the employment of the first party. But then the fact remains that even after execution of said agreement the services of the second party workman were continued till 27.7.10. The agreement relied upon by the first party was valid for 12 months from 15.9.04 and even after 12 months the employee was continued in service beyond the period of purported agreement and therefore the said agreement is not binding on the concerned workman. Even otherwise the first party has not adduced any evidence to prove that the said agreement was binding on the concerned workman.

17. In view of the facts I find that the concerned workman was in continuous service of the first party without any break on permanent post and then by way of oral termination, his services came to be terminated which amounted to retrenchment under section 2 (oo) of the act. The termination itself is illegal since it is without observing the mandatory provisions of the act. As such the termination was illegal, improper, unjust and bad in law. The said termination deserves to be quashed & set aside.

18. Considering all these facts the above issues are answered accordingly as indicated against each of them.

19. In view of my findings to above issues, I find that the concerned workman is entitled to be reinstated in service with full back wages & continuity of service and other consequential reliefs. Hence I answer the above issues accordingly and proceed to pass the following order.

ORDER

1. Reference is allowed with no order as to costs.

2. It is declared that the termination of the concerned workman from the services w.e.f. 27.7.10 is illegal, bad in law and same is quashed & set aside.

3. The first party is directed to reinstate the concerned workman in employment with full back wages & continuity of service and other consequential benefits.

Date: 20.09.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 23 अक्तूबर, 2019

का.आ. 1896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स राष्ट्रपति, भारतीय द्वारसम्पर्क इलाखादिनगुली नौकरारा संघ मंगलौर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 84/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.10.2019 को प्राप्त हुए थे ।

[सं. एल-40011/23/2001-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 23rd October, 2019

S.O. 1896.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The President, Bhartiya Doorasamparka Ilakha Dinagooli, Naukarara Sahgha Mangalore & Others, and their workmen which were received by the Central Government on 22.10.2019.

[No. L-40011/23/2001-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 09TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R 84/2001

I Party
The President,
Bhartiya Doorasamparka Ilakha
Dinagooli NaukararaSangha,
Felix Pai Bazaar,
Mangalore - 575 001.

II Party
The General Manager,
BSNL, Dakshina Kannada
Telecom District.,
Telecom House Road,
Mangalore - 575 001.

Appearance :

Advocate for I Party : Mr. S. N. Bhat

Advocate for II Party : Mr. Y. Hariprasad

AWARD

The Central Government vide Order No.L-40011/23/2001-IR(DU) dated 06.12.2001 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the General Manager, BSNL, Telecom District, Dakshina Kannada, Mangalore, in stopping 139 workers whose names are furnished in Annexure G, from work without complying with the provisions of law, after extracting work for years together during 1992 to 1996 is justified? If not, to what relief the said workmen are entitled?"

1. The case of the 1st Party is,

The concerned 139 workmen / members of the 1st Party Union were working with the 2nd Party at its various places of work for more than 240 days in a year. The Department of Telecommunication (D.O.T) earlier to 1987 was a wing of Post and Telegraph. The D.O.T consists of Circles and the said circles have several Telecom Districts, the 2nd Party is one such Districts covering D.K and Udupi Districts. There are about 225 telephone exchanges in the District headed by Divisional Engineers and Sub-Divisional Engineers; there are several other wings for Operation, Maintenance, Supervision and Administration. Due to shortage of man power in C&D groups, the 2nd Party was extracting work from the casual / contract / daily wagers. By giving opportunity to the interested parties to acquire experience and knowledge in C&D group used to appoint them as casuals. A permanent of pool of trained manpower was created and from the said pool they used to recruit for C & D group. Such recruitment though banned in the year 1985 the practice continued, without maintaining muster rolls. Though, the Department of Telecommunication on several occasion sought information from the 2nd Party pertaining to casual / temporary employment to frame scheme for their regularisation, the 2nd Party suppressed the true facts and submitted false statements. The 1st Party workmen have rendered several years of service without the facility of leave or any other benefits, they are not issued appointment orders. Their wages were debited into the concerned section Housekeeping account, in order to camouflage the wages paid to them, payments are made under fictitious names. They were not paid wages in accordance with the ruling of the Apex Court reported in AIR 1987, Page No. 2342, and also as per the instructions issued by the Department dated 04.12.1990 and 05.09.1994. The casual employees are entitled for city compensatory allowance, weekly holidays, national festivals holidays etc., which is denied to them. Since, the 2nd Party did not respond to their prayer for regularisation of service of the casual employees, who have rendered the continuous service they approached the Central Administrative Tribunal, Bangalore, (CAT) in Applications No. 559/1999 and 685-823/2000. Since, the 2nd Party was privatised they withdrew their application and approached the 2nd Party. Enraged by the fact of raising the dispute, the 2nd Party ousted the 1st Party from service without any prior notice or assigning any reason. The protest of the workmen was not heeded to; therefore, the 1st Party approached the Conciliation Officer, which conciliation ultimately failed.

2. The 2nd Party have set up their Counter case that,

M/s Bharath Sanchar Nigam Ltd., a Corporate Entity under Department of Telecommunication is responsible for installation, maintenance and provision of all types of Telecom facilities in the Country. For discharge of responsibility they use the service of regular employees and are bound by Central Government Civil Service Rules, Recruitment Rules and Disciplinary Rules etc. While undertaking large scale projects like bulk release of New Phone connections and Expansion of Exchanges, they get unskilled works done through outsourcing. The Central Government imposed a Ban on recruitment w.e.f 31.03.1985, thereafter no Officer of the Department is authorised to engage or recruit any labourers. The 1st Party workmen are neither recruited, appointed or can assure officially of any appointment in the Department. The 1st Party Union is not a recognised Union hence, has no Locus-standi. The individuals whose names are furnished by the 1st Party were never the employees of the 2nd Party. The individuals who performed occasional works on daily wages were not engaged on regular work and were not recruited for any sanctioned post and they were discharged on completion of work on daily wage basis, which does not amount to termination or retrenchment requiring compliance of Provision of Section 25-F of 'the Act'. The claim allegations are all false. The documents produced by the 1st Party lacks clarity and sanctity, they do not stand legal scrutiny.

3. On completion of the pleading, evidence was led from both sides. The 1st Party produced 80 documents as Exhibits W-1 to W-80 through WW-1. After giving audience to both, my Learned Predecessor rejected the reference. The 1st Party challenged the Award before the Hon'ble High Court in W.P Nos. 48984/2013 (L-TER) and 56039-56161/2013 (L-TER).

4. Vide considered order dated 28.05.2018 the Hon'ble High Court allowed the Writ Petition by setting aside the Award, remitted the matter for *fresh decision in accordance with Law, keeping in view the observations made (in the body of the order) and considering all aspects of the matter*. That apart this Tribunal was directed to *conclude the proceedings in an expeditious manner, but in any event within 6 months from the date of which the Presiding Officer takes charge of the CGIT*.

5. On my taking charge of this Tribunal on the motion of the 1st Party the case was called on 13.02.2019. Both learned advocates were present and the case was adjourned to 09.04.2019 for further enquiry, at the request of 1st Party case was adjourned to 27.05.2019 and thereafter to 06.06.2019. But none from the 1st Party side appeared on the two adjourned hearings. Written argument is submitted by the 2nd Party.

6. The Hon'ble High Court at Para 9 of its Judgement (Supra) had observed to effect that,

The Management had contended that the workmen had worked during the period 1992-1996 but not continuously but only for some period during the said years; but they had not produced the records though called upon by the 1st Party during the proceedings of the conciliation; it was incumbent on their part to produce register / muster roll and demonstrate the actual number of days for which each of the workmen had worked. Further at Para 10 it was observed thus:

In that background, consideration is required to be made by the CGIT with reference to each of the workmen with regard to whom the dispute has been raised and arrive at a conclusion as to whether at least some of them have completed the said period and the nature of benefit that is required to be extended, keeping in view the period, the lapse in time and also the present age of such workmen so as to mould the relief that is to be granted to such workmen. Therefore in such circumstances, when an appropriate consideration to that effect has not been made by the CGIT and further in that circumstance, the factual determination based on the documents is required to be made by the CGIT, the appropriate course for this Court would be to set aside the award dated 21.11.2011 and remit the matter to the CGIT to take note of these aspects and in the event the respondent not producing any documents even at that stage the CGIT shall consider as to whether any adverse inference is to be drawn and thereafter a decision is to be taken in accordance with law.

7. In the back drop of the above all I have gone through the records. In fact in the counter statement 2nd Party out-rightly disputed the claim on the ground that the individuals whose names are furnished by the 1st Party were never the employees of the Department. They disputed the claim allegation that 2nd Party used to make recruitment to Group C and D category staffs from a pool of casual workers, and casual workers were posted against permanent post in the Department. They had asserted that discontinuation of muster roll engagement of labour was a policy decision of the Central Government and cannot be disputed; they had rightly rejected production of non-existent documents before the ALC (C), the annexure A-1 to A-39 produced by the 1st Party are all unofficial, piecemeal and in some cases are concocted and forged; the 1st Party is trying to quote some internal correspondence of the Department which is actually not relevant to the claim.

I have further gone through the conciliation proceedings to find out if really the 2nd Party had admitted the identity of the 1st Party workmen. The Minutes of the conciliation proceeding is marked as Ex W-62. As per Ex W-62 the 1st Party union had filed a memo along with certain extracts of wage registers from 1992 to 1993. The 1st Party had also further filed the details of Mazdoors work, stating that same is available in the salary register maintained from April 1992 to July 1996 at General Manager, Telecom Office and also abstract of payment register from General Manager's Office.

The response of the 2nd Party during the conciliation was *it is an extract of wages bill of the Mazdoors work of April 1990 and April 1996. The Annexure contains the details of wages payable to labourers engaged for occasional and intermittent nature of duties and the same was never denied. The Annexures proves that labourers engaged were correctly paid*. However, their stand was Mazdoors were engaged in the office of General Manager Dakshina Kannada Telecom District as well as in the field in the decentralised set up as and when labourers were required for casual and intermittent nature of duties. The Mazdoors as and when required were engaged for Mazdoor duties only and not for any other types of Group 'C' or skilled duties. The failure report submitted to the Government by the ALC(C) is marked as Ex W-63. The representation of the Union that the annexures are the extracts from the payment register maintained by the General Manager Office produced by them contains the details of wages paid to the labourers engaged for occasional and intermittent nature of duty from 1992 to 1996 and by their stand the 2nd Party have admitted that the 1st Party workmen have served continuously between 1992 to 1996.

8. On travelling through the above materials, it does not indicate anywhere that the 2nd Party at any point of time admitted either the identity of the 1st Party workmen or the continuous service rendered by them between 1992 to 1996.

9. At this stage it is pertinent to take note of the fact that earlier to 1985 2nd Party was a Department of Telecommunication and since from 1985 there was ban on recruitment of employees, probably to meet the exigency of work the 2nd Party must have resorted to engage the workforce as casual / daily wages etc. Be that as it may the service

conditions of the regular employees and their recruitment are governed by Central Government Recruitment Rules and Disciplinary Rules. None of the 1st Party workmen were appointed to the post by calling for applications, interviewing the incumbents and selecting the merited candidates by following the reservation policy. Though it is stated by the 1st Party workmen that they have worked against the permanent vacancies, no corroborating evidence is placed on record. The sole witness for the 1st Party is concerned workman at Sl. No. 23. His oral evidence did not link the names and particulars of the workmen furnished in the statement of demands to the relevant documents marked by him. On his own showing upto 1996 payment was made in G.M Office and was entered in A2(4) wages / account and thereafter payment was made by respective head of the Department. Subsequently, they are entering the same in various account A1(2)(4) wages. On his own showing, the documents produced by him for the period subsequent to 1996 do not reflect the true state of affairs as existed on the date of reference. The 2nd Party contends that they cannot produce the documents which are not virtually in their position. As per the judgment of the Apex Court in, Secretary State of Karnataka and Ors.vsUmadevi and Ors. AIR 2006 SC 1806 - daily wagers, temporary employees and contractual employees cannot have legal expectation for regularisation of their service. Our Hon'ble High Court in the judgment reported in 2000 (86) FLR 622, ILR 2000 Karnataka 2156, KSRTC, Hubli Division vs B. B. Tabusi – depreciated the awards granting reinstatement to causal and temporary workmen in statutory body and government organisation though there is no sanctioned post. It was held:

46 '*Under the garb of exercise of powers under Section 11-A of the Industrial Disputes Act, the Labour Courts and Industrial Tribunals cannot grant the relief of reinstatement amounting to regularisation and appointment to the non-existing post which is otherwise not permitted in law*'. In the judgment reported in (2007) I SCC 408 in the matter of Indian Drugs and Pharmaceutical Limited and Workmen Indian Drugs and Pharmaceutical Limited at para 46 to 48 it is observed thus: -

46. In view of the above observations of this Court it has to be held that the rules of recruitment cannot be relaxed and the Court/Tribunal cannot direct regularization of temporary appointees de hors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad hoc or daily rate employee) or payment of regular salaries to them.

47. It is well settled that regularization cannot be a mode of appointment (Manager, RBI, Bangalore vs. S. Mani and others, AIR 2005 SC 2179 (para 54)).

48. In the aforesaid decision the Supreme Court referred to its own earlier decision in A. Umarani vs. Registrar, Co-operative Societies and others, AIR 2004 SC 4504, wherein it was observed: "Regularization, in our considered opinion, is not and cannot be a mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualifications would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization. (See State of H.P. V.Suresh Kumar Verma and another, (1996) 7 SCC 562"). This Court in R.N. Nanjundappa vs. T. Thimmiah, (1972) 1 SCC 409 held: "If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution the illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of the rules or it may have the effect of setting at naught the rules.

The decision in the case of R.N. Nanjundappa (supra) has

been followed by the Supreme Court in several decisions viz. Ramendra Singh vs. Jagdish Prasad, (1984) Suppl. SCC 142; K. Narayanan vs. State of Karnataka, (1994) 1 Suppl. SCC 44, and vs. Sreenivasa Reddy vs. Government of A.P., (1995) 1 Suppl. SCC 572. These decisions have also been noticed by the Supreme Court in Sultan Sadik vs. Sanjay Raj Subba, (2004) 2 SCC 377 and A. Umarani vs. Registrar, Co-operative Societies and others, (2004) 7 SCC 112".

10. The consistent position of law now is, appointments not done in accordance with the recruitment rules fail to qualify for regularisation of service, it necessarily follows that if a casual worker has rendered continuous service as contemplated by Sec 25-B of 'the Act' is terminated without following the mandatory procedure under Sec 25-F of 'the Act' the possible relief for him is by way of monetary relief.

11. Bearing in mind the above principle, I have further made attempt to trace the link between pleading and the proof. Except WW-1 / concerned workman Sl. No. 23, none from the union which espoused the cause are examined. Nothing is shown that WW-1 had authority to depose on behalf of concerned 139 workmen. Neither it is shown that they are the members of 1st Party Union. The workmen have not signed the claim statement. WW-1 produced 80 documents at a stretch without explaining the nature of the documents and how they are relevant, to establish which fact.

12. Going by the documentary evidence,

Ex M-1 is the Photostat copy of the Circular issued dated 10.04.1985 from the office of the GM Telecom, Karnataka Circle prohibiting fresh recruitment and employment of casual labour. However, those who were working as casual labours in maintenance / office work were directed to be reallocated work of casual nature in installations, cable laying, line construction and dismantling work. It was indicated that the casual labour working in the project work shall be retrenched as soon as project is completed.

13. Coming to the documentary evidence of the 1st Party

Ex W-1 to Ex W-6 are the Photostat copies of the appreciation letters / certifications issued in favour of some of the 1st Party workmen to highlight their service in the 2nd Party. Neither the author nor the recipients of these documents were examined to prove the contents of these letters.

Ex W-7 is the extract of the payment register as per its nomenclature. But first sheet pertains to the period April 1990, the second sheet pertains to the year July 1996 and the third sheet is the extract from some other register for the period October 1998 to December 1998. There is no coherence in the contents of these loose sheets.

Ex W-8 to Ex W-30 are the receipts for the year 1998 and

1999 towards the works like housekeeping, watch and ward division and contractors bill. It is not shown which of the bill relates to which of the 1st Party workmen.

Ex W-33 is a log sheet and the driver who maintains this log sheet has not come before the Tribunal to explain the relevancy of this document.

Ex W-31, Ex W-32 Ex W-34 to Ex W-57 are the inter office communications, proceedings, circulars, work allotment charges, etc.

Ex W-58 is the Photostat copy of the application with Annexures filed by the 1st Party workmen before the CAT seeking regularisation of their service.

Ex W-59 to Ex W-63 are the Conciliation proceedings records.

Ex W-64 is a Photostat copy of a letter dated 25.06.2001 from the Office of Assistant Director General (T.E) permitting to recruit from temporary status casual labour as per the guidelines issued by the personal branch but no evidence is adduced by WW-1 whether the service of any of the 1st Party workmen were regularised.

Ex W-65 is the Registration Certificate of the Union.

Ex W-66 are the receipts running from pg 266 to 657 of the document commencing from the year January 1994, many of these receipts bear the name Vasanth but WW-1 never claimed that these are the receipts / vouchers passed by him in favour of the 2nd Party for having received the wages towards the service rendered by him. In some of the documents names of some others is also reflected. Ex W-66 also includes copy of a office register without any nomenclature.

Ex W-67 is a receipt in the name of Sunil Kumar for Housekeeping.

Ex W-68 are 2 receipts in the name of Shankar Naik.

Ex W-69 are 37 receipts in the name of Girish.

Ex W-70 to Ex W-80 are the Conciliation records.

14. It is pertinent to note that even if a person works on daily wages for a continuous period of 240 days or more at different wings / branches of the establishment that cannot be counted as continuous service as contemplated by Sec 25-B of 'the Act'. To claim the benefit of Sec 25-F it also must been shown that he had worked for a particular work or Department/ Branch for more than 240 days. No such evidence is coming from the 1st Party. The evidence of the WW-1 is insufficient to establish that either himself or any of his co-employees have worked continuously in a particular place for more than 240 days. Had if there was some evidence to that extent that would have led to an inference that they were terminated illegally without following due process of law contemplated by Sec 25-F of 'the Act'. It is the consistent stand of the 2nd Party that they had engaged labourers for work of casual nature whenever need arose and they have not maintained any records. In the claim statement they have mentioned the names of 124 workmen with the details of date of joining / termination, residential address, nature of work and the designation of the Controlling Officer. Mere mention of last place of work is insufficient without establishing that they had rendered continuous service of more than 240 days in the said place. In that view of the matter the point which is referred for adjudication with the pre-notion that 139 workers were stopped from work without complying the due process of law after extracting work from them from 1992 to 1996 is misconceived. No relief can be granted under the reference. Hence,

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 09th October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 23 अक्तूबर, 2019

का.आ. 1897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड पटना और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, पटना के पंचाट (संदर्भ संख्या 6(c) of 2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.10.2019 को प्राप्त हुए थे ।

[सं. एल-42011/205/2012-आईआर (डीयू)]

वी. के. ठाकुर, अनुभाग अधिकारी

New Delhi, the 23rd October, 2019

S.O. 1897.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 6(c) of 2013) of the Central Government Industrial Tribunal-cum-Labour Court, Patna, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, Bharat Sanchar Nigam Ltd. Patna & Others, and their workmen which were received by the Central Government on 14.10.2019.

[No. L-42011/205/2012-IR (DU)]

V. K. THAKUR, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. : 06 (C) of 2013

Between the management of Chief General Manager, Bharat Sanchar Nigam Ltd. Patna, Patna Telecome Circle, Patna (Bihar)-800001 and Their workman Sri Durga Kumar Chaudhar represented through President, BSNL Casual Shramik Sangh, Dulhil Bazar Belhouri, Patna (Bihar).

For the management : Sri Sanjay Kumar, Advocate.

For the Workman : Sri Gajnaffar Nawab, President of the said union

Sri Dhramveer Paswan, Secretary.

Present:- Vishweshwar Nath Mishra, Presiding Officer,
Industrial Tribunal, Patna.

AWARD

Patna, dated- 11th September, 2019

By the adjudication order no.-L-42011/205/2012-IR(DU) dated- 02.08.2013 the Govt. of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section-(1) and sub-section-(2A) of section-10 of the Industrial Dispute Act, 1947, (hereinafter to be referred to as " the Act"), the following dispute between the management of Chief General Manager, Bharat Sanchar Nigam Ltd. Patna, Patna Telecome Circle, Patna (Bihar)-800001 and Their workman Sri Durga Kumar Chaudhar represented through President, BSNL Casual Shramik Sangh, Dulhil Bazar Belhouri, Patna (Bihar) for adjudication to this tribunal:-

SCHEDULE

"Whether the action of the management of Bharat Sanchar Nigam Ltd., Patna in terminating the services of Sri Durga Kumar Chaudhar w.e.f 06.01.2012 is legal and justified? To what relief the workman concerned is entitled to?"

2. After receipt of the reference, notices were issued to the workman through registered post and management notice send by peon book for appearance on 20.09.2013. On 20.09.2013 concerned parties did not appear.

3. On 25.10.2013 representative of the workman Sri Dhramveer Paswan, Secretary appeared and filed a petition regarding pendency of one case at Central Labour Tribunal, Dhanbad and for transfer of the same at Patna. But thereafter he left pairvi in the case and stopped appearing in the case on the dates filed.

4. Again registered notices were issued to concerned parties vide memo no.- 86 dt- 06.10.2017 upon which management appeared through an advocate. On 02.02.2018 Gaznaffar Nawab said to be the representative of the workman seen the order sheet but workman never appeared uptill now. No any statement of claim was filed on behalf of the workman.

5. From perusal of the record, it appears that notices were issued by registered post to the workman and notice was served to the management by peon book and registered post. Despite several opportunities given the workman he did not appear. On 18.02.2019 even after repeated call no body turn up on behalf of the workman, although the management is present. In the aforesaid facts & circumstances it appears that the workman has left with no interest at all in this case. So I pass " No Dispute Award" in this case. This award is effected after date of publication and gazette.

This is my award accordingly.

Dictated & Corrected by me.

11.09.2019

VISHWESHWAR NATH MISHRA, Presiding Officer

नई दिल्ली, 25 अक्तूबर, 2019

का.आ. 1898.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स ए.के. इन्टरप्राइजेज एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 39/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुआ था।

[सं. एल-43011/1/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th October, 2019

S.O. 1898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2015) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. A.K. Enterprises and others and their workman, which was received by the Central Government on 21.10.2019.

[No. L-43011/1/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Dr.S.K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947.

REFERENCE NO. 39 OF 2015

PARTIES : The Working President,
Jharkhand Copper Mines Workers Union,
At/PO: Mosabani Mines,
Distt: Singhbhum (East)
Singhbhum

Vs.

M/s. A.K. Enterprises,
Sub-Contractor of M/s. India Resources Ltd,
4/4 Aastha Vijay .Uliyan Kadma,
Distt: Singhbhum (East) Jharkhand.

Order No. L-43011/1/2015-IR(M) dt. 03.06.2015

APPEARANCES :

On behalf of the workman/Union : Mr. M.M.P.Sinha, Ld. Advocate .

On behalf of the Management : Mr. Ajit Kumar Khan, Representative

.

State : Jharkhand **Industry : Coal**

Dated, Dhanbad, the 25th September.2019

AWARD

The Government of India, Ministry of Labour & Employment , in exercise of the powers conferred on it under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No**. L-43011/1/2015-IR (M) dt.03.06.2015.**

SCHEDULE

"Whether the action of the Management of M/s A.K. Enterprises Sub-Contractor of M/s India Resources Ltd., Contractor of M/s Hindustan Copper Ltd., for denying the payment of retrenchment benefits to the 140 workmen is justified? if not, what relief the concerned workmen are entitled to ?''

On receipt of the Order No **L-43011/1/2015-IR(M) dt.03.06.2015** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 39 of 2015 on 29.06.2015 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

2. The hearing of I.D. Reference Case was listed on 17.09.2019. Mr. Shamsher Khan, Working President Sponsoring Union Representative along with its Ld. Advocate Mr M.M.P.Sinha was present. Mr .Ajit Kumar Khan, Sub Contractor of M/s. India Resources Ltd. was present from O.P./Management Mr.M.M.P.Sinha, Ld. Advocate for the Sponsoring Union /Workmen moved a petition dt.17.09.2019 before the Tribunal with prayer for closure of the Reference Case with submission that the matter of dispute was already absolved to which Management Representation present, did not object. No W.S. has been filed till date even after availing numerous opportunities on several dates 27.08.2015,12.10.2015,11.03.2016,30.06.2016,27.08.2016,26.10.2016,28.11.2016,10.01,2017,20.02.2017,18.04.2017,08 .06.2017,08.08.2017, and23,08.2019.Whereas Written Statement of Claim on the part of the Sponsoring Union/workman should have been filed within fifteen days of the receipt of the reference who raised the claim as stated in the Order of Reference from Government of India, which reads as follows :

"**The Parties raising the dispute shall file a statement of claim complete with relent documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central),Rules,1957**. ''

On further scrutiny at a glance, it has been noted that several adjournments were availed during the periods of hearing after serving notices. It also shows natural justice were provided by this Tribunal to come out for filing with written statement of Claim right from 27.08.2015 to 23.08.2019. At least 13 sittings were held during the trial of the hearing of this case .Lastly on fresh notices on 23.08.2019 Mr. Samsher Khan appeared along with his Authorized Ld. Counsel Mr. M.M.P.Sinha and moved a petition to withdraw the Ref. I. D. citing reluctance from Union to proceed with case on merits as the claim has already been settled out amongst the workmen concerned.

3. Question of the appearances from the O.P. /Management does not come into picture so long as the party raising the dispute do not file the Written Statement of Claim (W.S.) on its behalf giving the OP/Management within stipulated times to reply file counter reply .

4. The case under reference is related to denials of the retrenchment benefits to as number as 140 workmen by the M/s. A.K. Enterprises, Jamshedpur (Singhbhum) (East) the sister concern of the Main Contractor M/s. India Resources Ltd., of the M/s. Hindustan Copper Ltd. (HCL) , seeking relief by raising the alleged dispute .

5. Considering the matter and facts and materials on record and going through the petition filed by the Ld. Advocate for the Sponsoring Union it is absolutely clear the issue no longer exist as the Working President on behalf of the Union already confirmed the factual position in one sentence which later on, filed on behalf of the Ld. Advocate of the Sponsoring Union by Mr. MMP Sinha. The Tribunal had provided ample opportunities to file the W.S. on 27.08.2015, 12.10.2015, 11.03.2016, 30.06.2016, 22.08.2016, 26.10.2016, 28.11.2016, 10.01.2017, 20.02.2017, 18.04.2017, 08.06.2017, 08.08.2017, and 23.08.2019 and lastly on 17.09.2019 .So the matter, in question, has been settled out after having made the retrenchment benefits, the contention on which the dispute was raised. The Ld. Counsel for Sponsoring Union by moving a petition asserted to this fact. This also shows the conduct and approach of the workmen concerned proceeding with the hearing are rather much more inclined to get the case closed. In the light of above fact and circumstance the Tribunal has come to conclusion that the issue on which the case had been raised, in real terms diluted and no more in existence. The dispute is disposed off as withdrawn.

S. K.THAKUR, Presiding Officer

नई दिल्ली, 25 अक्तूबर, 2019

का.आ. 1899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स नेशनल इंश्योरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 14/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.10.2019 को प्राप्त हुआ था।

[सं. एल-17012/8/2009-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th October, 2019

S.O. 1899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 14/2010) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. National Insurance Company Ltd. and their workman, which was received by the Central Government on 22.10.2019.

[No. L-17012/8/2009-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 16TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 14/2010

I Party	**II Party**
Sh. Saleem Sayed Rabbani Teepunavar, H.No. 77, KSRTC Colony, Kalasapur Road, 4th Cross, Kalasapur (Post), Taluk & Dist. Gadag - 582 103.	The Divisional Manager, National Insurance Company, Limited, Divisional Office, Sujatha Complex, P.B. Road, Hubli - 580 029.

Appearance

Advocate for I Party : Mr. Shridhar G Hosur

Advocate for II Party : Mr. K Sridhara

AWARD

The Central Government vide Order No.L-17012/8/2009-IR(M) dated 08.04.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the claim of Sri Saleem Sayeed Rabbani for reinstatement/re-employment made against National Insurance Company Ltd., Hubli is legal and justified? To what relief the workman is entitled?"

1. The claim of the workman is,

That he was appointed as Sweeper cum Peon in the office of the 2nd Party at Gadag on 04.09.2000; he was paid Rs. 600/- per month towards his daily wages; he was working as a full-time sweeper against a regular permanent vacancy. After working for 1 year and 8 months, he requested the Manager for recommendation of regularisation of his service. But the Manager who was interested in some other person discontinued his service w.e.f 05.04.2002 without due notice and without permission from the higher authorities. He could not have been terminated without complying the provisions of sec 25-F of 'the Act'.

2. The 2nd Party contested the claim disputing the identity of the 1st Party, it is contended that the 2nd Party has no policy of employing anyone on daily wages; he was not recruited as per the recruitment procedure of the 2nd Party. Neither the Divisional Manager nor the Branch Manager have authority to appoint any person of their own against the prescribed procedure of the Company. All appointments are done by the Head Office of the 2nd Party Management; there is no such post called Sweeper cum Peon in their office. As per the records available at the Gadag branch one Saleem / Saleemsab worked as part time sweeper purely on temporary basis; worked for 1 ½ hours per day during the period 2000 to 2002 approximately for 16 days and was paid wages through disbursement vouchers at Rs. 50/- per day; he has worked whenever regular sweeper was on leave. He has not worked continuously for 240 days in a Calendar Year, the attendance registers and wage register of the employee does not disclose the name of the petitioner as their workman. Those documents were produced before the Conciliation Officer and the claim is liable to be rejected.

3. Both parties adduced evidence reiterating their stand and have submitted written arguments. The sole document produced for the 1st Party is an OPD slip dated 15.02.2012 in respect of one Sh. Saleem aged 36 years. But in his evidence examined in chief on 22.01.2014 he is shown as Saleem Sayyad Rabbani Tippunavar aged 35 years.

4. On behalf of the 2nd Party the Senior Branch Manager, Gadag was the witness, in his affidavit evidence he has averred to the effect that the records pertaining to attendance of the employees and voucher were kept in the Divisional Office situated at Sujatha Complex, P.B Road, Hubballi; the Divisional Office was upgraded as Regional Office and was shifted to new premises situated at Arihanta Plaza, Kusugal Road, Hubbali; the Branch office of the 2nd Party situated at New Cotton Market Building is upgraded as Division Office. On account of the said changes records at Divisional Office have been shifted to Regional Office and upgraded Division Office; in the process of shifting the documents the original attendance register and vouchers are misplaced; the attested copy of the attendance register and vouchers were produced before Assistant Labour Commissioner (Central) during Conciliation Proceedings; there is no relationship of workmen and employer between the parties neither there is appointment nor there is termination of the 1st Party. Even after lengthy cross examination of this witness nothing fruitful emerged for the benefit of the 1st Party. The witness maintains

that as per the Branch records available in Gadag Branch there are 7 disbursement payment vouchers pertaining to the name Saleem/Saleemsab and it is not the 1st Party's name and they are signed by Saleem but not by Saleem Sayyad Rabbani.

5. MW-1 during the course of his cross examination undertook to produce the vouchers for having paid money to Saleem / Saleemsab. But no such vouchers are produced. It is the legal position that, any such undertaking to produce a document during the course of cross examination of a witness cannot be executed. It is in the wisdom of a party to a litigation to produce documents in their custody which are relevant to their case. No attempt was made by the 1st Party to seek a direction by this Tribunal to the 2nd Party for production of the above documents. In the circumstance no adverse inference can be drawn against the 2nd Party for non-production of vouchers pertaining to Saleem / Saleemsab. Fact remains that the claim of the 1st Party is not corroborated by documentary proof. Though he had produced Photostat copies of the attendance register, vouchers and documents pertaining to service of policies on the clients etc., these documents are not marked in evidence; his sole document is a out-patient chit of 15.02.2012 pertaining to Saleem aged 36 does not corroborate with his own declaration averred on 22.01.2014 wherein he proclaims his age as 35 years. He is aware of the documents that were produced by the 2nd Party before the Conciliation Officer, despite the same he did not make attempt to demonstrate that Saleem Sayyad Rabbani and Saleem / Saleemsab both are his own names. In the absence of corroboration proof pertaining to his claim of serving the 2nd Party continuously for 240 days in the preceding calendar month of his last date of employment i.e. 05.04.2002, it cannot be held that his termination is illegal for not complying the procedure contemplated by sec 25-F of 'the Act'.

6. For the above reasons, I hold that the claim of the 1st Party's Sh. Saleem Sayyad Rabbani reinstatement/ reemployment is not legal and not justified. He is not entitled for any relief.

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 16th October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 25 अक्तूबर, 2019

का.आ. 1900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 22/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.10.2019 को प्राप्त हुआ था।

[सं. एल-30011/79/2000-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th October, 2019

S.O. 1900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2001) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 22.10.2019.

[No. L-30011/79/2000-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 09TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R 22/2001

I Party	**II Party**
The General Secretary, Kanara Dock & General Workers Union, (INTUC), K.S.R.M. Trust Building, Light Hill Road, Mangalore - 575 003.	The Senior Manager, M/s Hindustan Petroleum Corp. Ltd., L.P.F. Import Facility, Terminal Mangalore, Mangalore - 574 147.

Appearance

Advocate for I Party : Mr. J. Ravindra Naik

Advocate for II Party : Mr. M. Jayarama Shetty

AWARD

The Central Government vide Order No.L-30011/79/2000-IR(M) dated 22.03.2001 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of M/s Hindustan Petroleum Corp. Ltd. L.P.G. Import Facility Terminal, Managalore is justified in refusing employment to S/Shri Kishore, Dinesh Kulai and Suresh Drivers? If not, to what relief the said workmen are entitled to?"

1. The 1st Party Union has espoused the cause of three workmen, who claim to have been employed by the 2nd Party on regular and continuous basis.

It is claimed that, the 1st party workmen were appointed as Drivers; Sh. Kishore was employed on 26.11.1995, after the project work of the 2nd Party at Mangalore L.P.G Import Faculty was completed, he worked as Driver for Senior Manager, H.P.C.L, Mangalore; Sh. Dinesh Kulal was appointed on 15.09.1997 and he has worked as Heavy Duty Driver in D.C.P Tanker; Sh. Suresh was employed on 23.09.1997, he was working as a Jeep Driver upto July 1998 and thereafter was assigned work of Driver in D.C.P Tanker. They have served without any break; they were refused employment w.e.f 13.12.1999. The 2nd Party employs Drivers in two shifts, there are heavily short of drivers. The 1st Party workmen were not paid stipulated wages as per the circular dated 27.10.1997, they were not paid Bonus and O.T Wages. The workman filed complaint before the ALC (Central) cum Conciliation Officer and claimed for actual salary due to them for the work performed in October 1997. On the receipt of the notice of complaint, the 2nd Party refused employment to them. The Management through their contractor obtained the signatures of Sh. Kishore and Sh. Suresh for having paid the wages; they have not paid any allowance. Sh. Dinesh Kulal since refused to sign the papers is not paid wages for the month of October 1999. Their service is terminated without following the procedure contemplated for retrenchment under 'the Act'.

2. The claim is contested by the 2nd Party on the following grounds,

The 2nd Party is a Government of India undertaking and the Mangalore L.P.G. Import facilities are engaged in the import of L.P.G. The company's terminal was commissioned in October 1996 and the commercial operation started in the year 1997; they had not engaged the Man power either on Contract or Casual basis prior 1998. The import of L.P.G is done through Jetty No.9 of N.M.P.T. It is required to position fire tenders in attendance at the Jetty during the time of discharge of L.P.G from the Ship. N.M.P.T requested the 2nd Party to position the Company fire tenders during the course of L.P.G discharge. The 2nd Party positioned the company's fire tenders at their request as a Stop Gap arrangement. Later, N.M.P.T made their own arrangement for positioning their own tender. Hence, the 2nd Party was no longer required to Position Company's fire tender and service of the 1st Party workman was discontinued. They have not worked continuously with the 2nd Party; they are not appointed on the regular basis; they were engaged on contract basis and paid payment. After the project work, they were not assigned as Drivers. The claim averments are all false. The 2nd Party at the time of project had two Jeeps; after completion of the project one Jeep is sent to another project location; remaining one Jeep at the location is used by the Corporation Officer on self-driving. The 2nd Party is not in requirement of services of Drivers.

It is further stated that, the Corporation Terminal was commissioned in the year 1996 not in the year 1995 as claimed by the 1st party. At the time of the project only, the corporation utilised the Jeeps. The corporation is engaged in import of L.P.G and distribution of the same, for distribution heavy duty tankers are hired on contract basis. The crew of the Tankers are trained for said purpose. The fire Tenders are maintained by N.M.P.T. The 1st Party workmen have not worked in two shifts as claimed. They have withdrawn the earlier complaint filed by them before the A.L.C alleging non-payment of wages. In the month of October 1999, the corporation entrusted the corporation tenders to M/s. St. Joseph Construction and paid contract charges on lump sum basis for maintenance and upkeep of the fire tenders. The 1st Party workmen were employed by the contractor and they have received the wages from the contractor.

3. On behalf of the 2nd Party, their Chief Regional Manager was examined as MW-1. Four witnesses were examined for the 1st Party, WW-1 is the General Secretary of the Union; WW-2 to WW-4 are the concerned workmen.

4. None of the 1st Party workmen are issued appointment order or termination order. While reiterating the stand of the 2nd Party MW-1 has stated in his affidavit evidence, that there is no shortage of Drivers under the 2nd Party. Despite thorough cross examination nothing beneficial to the case of the 1st Party could be brought out from him.

5. During the cross-examination WW-1 / Secretary of the Union stated that the 1st Party workmen were driving the Fire Tender Vehicle called D.C.P which was stationed when the shipment of LPG, Diesel, Petrol, Crude oil were brought to Mangalore Port. The workmen were supposed to be with the said vehicles as long as the work of unloading of the aforesaid products from the shipment was to be continued.

Above affidavit averment is contrary to the claim statement averments wherein, it was claimed by Sh. Kishore that he was appointed as a Driver to the Jeep bearing No. CRX 6746 in the year 1995 and thereafter in the Jeep bearing No. KA 19A 802 from July 1998 onwards; Sh. Dinesh Kulal was employed since 15.09.1997 as a Driver initially to a Jeep bearing No. KA-19A-41 thereafter as Heavy Duty Driver in D.C.P Tanker; Sh. Suresh was appointed on 23.09.1997 and worked as a Jeep Driver upto August 1998 and thereafter worked as a Driver in D.C.P Tanker. The case of the 2nd Party was to the effect that the Companies Terminal was fully commissioned in 1996 at Mangalore; Sh. Kishore was engaged on casual basis on August 1998 at different times, Sh. Kulal and Sh. Suresh were engaged from October 1997 on casual basis.

6. It is the case of the 1st Party workman that during November 1999 they approached the Labour Commissioner against the 2nd Party complaining non payment of over time, Sunday wages and the salary for the month of October 1999, enraged by the same they were refused employment by the 2nd Party. In their petition to A.L.C (Central) marked as Ex W-3 dated 12.11.1999 it was stated that Mr. Kishore is working as Driver for the last five years and presently serves Senior Manager as a Driver; Mr. Dinesh Kulal is working since last two years in the Jeep of the Management as Driver; Mr. Suresh is working since last two years in the Jeep of the Management as Driver. None of them had claimed to have worked for positioning the Fire Tenders.

7. In its reply to W-3, the 2nd Party vide Ex W-5 had responded that they had not engaged Manpower either on casual or contract basis prior to 1998; the 1st Party workman worked on casual basis at different times whenever required. During October 1999 they entrusted the maintenance of Corporation tenders to M/s. St. Joseph construction and paid the contract charges on lump sum basis. M/s. St. Joseph Construction advised the 2nd Party that they have employed the above said persons for carrying out the jobs. On receipt of the complaint and on inquiry with the contractor and Officer in-charge of Fire Station they are informed that the wages were distributed by the Contractors to the workmen in the presence of their Officers.

The 1st Party filed its rejoinder as per Ex W-6 stating that they have refused employment from 13.12.1999.

8. The 2nd Party added their response dated 26.09.2000 as per Ex W-8 wherein it was indicated, because of the critical nature of the job (Fire Tending) it was desirable to keep them standby during such period. The Drivers were used on the Jeeps as and when required, wherever the ship was not under discharge; they have two jeeps in their location and one is sent to another location and another one is retained for Officers use.

9. The 1st Party to demonstrate the fact that they rendered service to the 2nd Party produced copies of time sheets with the details of the date, the hours of work. In respect of workman Sh. Kishore Kumar, Photostat copies of the Time Sheets for the period 01.08.1998 to 31.07.1999 are marked. Going by these documents he has worked for more than 240 days in a calendar month falling behind 31.08.1999; Photostat copy of a letter written by the Senior Operation Officer showing him as the Driver of the 2nd Party (Ex W-13) is produced.

In respect of Sh. Dinesh kulal the Xerox copy of the Pass issued on 19.03.1999 by Central Industrial Security Force and the Time Sheets commencing from 01.10.1997 to 30.11.1999 are produced, which would indicate that in the two-calendar year falling prior to 31.12.1999 he has worked continuously for the 2nd Party.

In respect of Sh. Suresh Photostat copy of the Pass issued on 19.03.1999 by Central Industrial Security Force and Time sheets are produced. That pertains to the period from 01.10.1997 to 30.11.1999 which would indicate that in the two-calendar year falling prior to 31.12.1999 he has worked continuously for the 2nd Party.

I am persuaded to accept these documents as the evidence of their service since there was no effective cross examination to the workmen on these documents.

10. A consolidation of the oral and documentary evidence would manifest that all three 1st Party workmen are casual workers whose service were availed by the 2nd Party without issuing them any appointment order and dispensed without a termination order. Since the 2nd Party has identified them in their objection statement filed before the Labour Commissioner it may be favourably inferred that the 1st Party workmen worked has casual labourers to the 2nd Party. Wherefore, the service rendered by them falls within the description of continuous service contemplated by sec 25-B of 'the Act'.

11. The workmen who are at the receiving end may be disabled to produce better evidence rather than what they have produced. It is not the case of the 2nd Party that retrenchment compensation was paid either by them or the Contractor M/s. St. Joseph Construction while dispensing their Service. Termination of service of a workman without following the mandatory procedure contemplated by sec 25-F of 'the Act' vitiates their termination.

12. That being so, the next question is moulding of appropriate relief. Now it is the look of the N M P T to maintain and keep the Fire Tenders at the Jetty. The 2nd Party does not have any post of Drivers to be filled up. Being the casual workers, it is not within the propriety of this tribunal to reinstate them to non-existent post though they have worked continuously for 240 days in a calendar year. In the judgment reported in 2007 1 SCC 408 in the matter of Indian Drugs and Pharmaceutical Limited and Workmen Indian Drugs and Pharmaceutical Limited at para 46 to 48 it is observed thus: -

> *46. In view of the above observations of this Court it has to be held that the rules of recruitment cannot be relaxed and the Court/Tribunal cannot direct regularization of temporary appointees de hors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad hoc or daily rate employee) or payment of regular salaries to them.*
>
> *47. It is well settled that regularization cannot be a mode of appointment vide Manager, RBI, Bangalore vs. S. Mani and others, AIR 2005 SC 2179 (para 54).*
>
> *48. In the aforesaid decision the Supreme Court referred to its own earlier decision in A. Umarani vs. Registrar, Co-operative Societies and others, AIR 2004 SC 4504, wherein it was observed: "Regularization, in our considered opinion, is not and cannot be a mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or anybody or authority governed by a Statutory Act or the Rules framed there under. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualifications would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization. (See State of H.P. V.Suresh Kumar Verma and another, (1996) 7 SCC 562"). This Court in R.N. Nanjundappa vs. T. Thimmiah, (1972) 1 SCC 409 held: "If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution the illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of the rules or it may have the effect of setting at naught the rules.*
>
> *The decision in the case of R.N. Nanjundappa (supra) has been followed by the Supreme Court in several decisions viz. Ramendra Singh vs. Jagdish Prasad, (1984) Suppl. SCC 142; K. Narayanan vs. State of Karnataka, (1994) 1 Suppl. SCC 44, and vs. Sreenivasa Reddy vs. Government of A.P., (1995) 1 Suppl. SCC 572. These decisions have also been noticed by the Supreme Court in Sultan Sadik vs. Sanjay Raj Subba, (2004) 2 SCC 377 and A. Umarani vs. Registrar, Co-operative Societies and others, (2004) 7 SCC 112".*

Hence, Retrenchment compensation not reinstatement or regularisation is the legal answer. The arithmetical calculation of the retrenchment compensation at this length of time definitely will not fetch convincing benefit for them. Hence, a lump sum compensation keeping in view of the escalation of the money value from 1999 till this date would persuade me to hold that 1st Party workman Sh. Kishore who worked for 1 year is entitled for compensation of Rs. 20,000/- and Sh. Dinesh Kulal and Sh. Suresh who had worked for 2 years are entitled for Rs. 30,000/- each in lump sum that would meet the ends of justice. Hence,

AWARD

The reference is accepted.

The action of the 2nd Party Management in refusing employment to the 1st Party workers Sh. Kishore, Sh. Dinesh Kulal and Sh. Suresh without complying the mandatory provisions of sec 25-F of 'the Act' is not legal.

The 2nd Party is directed to pay Rs. 20,000/- to Sh. Kishore and Rs. 30,000/- each to Sh. Dinesh and Sh. Suresh towards their entitlement for retrenchment compensation within 60 days of date of publication of this Award in the Official Gazette.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 09th October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 25 अक्तूबर, 2019

का.आ. 1901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिन्दुस्तान पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 38/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 21.10.2019 को प्राप्त हुआ था।

[सं. एल-30011/21/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 25th October, 2019

S.O. 1901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2015) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 21.10.2019.

[No. L-30011/21/2015-IR (M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande**,** Presiding Officer

REFERENCE NO. CGIT-2/38 of 2015

EMPLOYERS IN RELATION TO THE MANAGEMENT OF HINDUSTAN PETROLEUM CORPORATION LTD.

The Chief Manager,
HPCL, B. D. Patil Marg,
Vill – Gavanpada, Chembur,
MUMBAI – 400 074.

AND

THEIR WORKMEN

The General Secretary,
Bhartiya Kamgar Karamchari Mahasangh,
5, Navalkar Lane, 1st Floor,
Prarthana Samaj, Girgaon,
MUMBAI – 400 004.

APPEARANCES:

FOR THE EMPLOYER : Mr. L. L. D'souza, Representative

FOR THE WORKMEN : Mr. Chokalingam , Representative

Mumbai, dated the 12th September, 2019.

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-30011/21/2015 – IR (M) dated 30.06.2015. The terms of reference given in the schedule are as follows :

"Whether the action of the management of Hindustan Petroleum Corporation Ltd. (Mumbai Refinery) has violated Clause 9.4 of the long term settlement dated 17.4.1996 on the issue of relieving system which states that the shift workers will be required to continue in the next shift, till his reliever releases him ? If it is so, to what relief the union is entitled to ?"

2. After the receipt of the reference, both the parties were served with the notices.

3. It appears that the dispute raised in the schedule was raised by Hindustan Petroleum Karamchari Union in respect of regular & permanent workmen of the company but then it appears that the statement of claim is filed by Bharatiya Kamghar Karamchari Mahasangh [BKKM] pertaining to the allegations of sham & bogus contract concerning the contract labour working in electrical, sweeping, cleaning, water supply, tank wagon operator, pump operator and maintenance dept. In the statement of claim the prayer is to grant status of permanency with all benefits to the contract labour in the aforesaid depts. That schedule of reference is different and therefore BKKM submitted application for permitting the union to write letter to the Govt. of India, Ministry of Labour to send the appropriate order of reference with reference to FOC report dated 9.2.2015 No. BALC [C-1]/8[51] 2014 – B-2. In view of this BKKM union is permitted to write letter to the Govt. of India, Ministry of Labour for sending the appropriate order of reference.

4. So far this reference is concerned, the notice was issued to Hindustan Petroleum Karamchari Union. In response to that Hindustan Petroleum Karamchari Union appeared and filed application mentioning therein that the union has decided to withdraw the matter immediately and that the union does not wish to pursue the said matter. In view of withdrawal of the matter by KPKU the present reference is withdrawn and disposed of. Hence Order.

ORDER

The present reference is thus withdrawn and hence disposed of.

Date: 12.09.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2019

का.आ. 1902.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 24/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2019 को प्राप्त हुआ था।

[सं. एल–22012/106/2017–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 28th October, 2019

S.O. 1902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2018)of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 10.10.2019.

[No. L-22012/106/2017–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/24/2018-19 Date:27.09.2019

Party No. 1: Chief General Manager,
Western Coalfields Limited, Pench Area
P.O. Parasia Distt.
Chhindwara.

V/s

Party No. 2: Adhyaksh,
Coal Mazdoor Union, Ambara, Tah-Parasia,
Distt.
Chhindwara– 480449

AWARD

(Dated:-27th September, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of Western Coalfields Limited and their Union, Coal Mazdoor Union for adjudication, as per letter **No. L-22012/106/2017-IR (CM-II) Dated 17.05.2018,** with the following schedule:—

"क्या मुख्य महा प्रबंधक, वेकोलि, पेंच क्षेत्र, परासिया, जिला–छिंदवाडा द्वारा अपने आदेश क्रमांक वेकोलि/पेच/कावि/एसटीआर/23/1015/17 दिनांक 28/03/17 के द्वारा कामगार श्री संजय सुर्यवंशी, पंप खलासी, नेहरिया भूमिगत खान को लिपिकिय कार्य के स्थान पर उनके चयनित, पद ट्रिपमैन ग्रेड III (ट्रेनी) पद पर कार्य करने हेतु आदेशित करना न्यायोचित है? यदि नहीं, तो कामगार, श्री. संजय सूर्यवंशी क्या अनुतोष पाने का अधिकारी है?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union i.e. Coal Mazdoor Union,("The Union" in short) filed the Statement of Claim and the Management of Western Coalfields Limited ("Party No.1" in short) did not file its Written Statement.

3 Union filed statement of claim on behalf of workman, but management did not file written statement. In statement of claim, union asserted that, workman Shri. Sanjay Suryawanshi worked as a Clerk from 2008, but area manager posted him as Trip Man. In this way, they breached the provision 33-A of the Industrial Disputes Act (In short "The Act"). According to the Union, this order of Party No. 1 i.e. management is against the provision of law, so they prayed that, workman may be promoted as a clerk.

4. Workman filed an application (which is marked as I.A. No. 3) to withdraw the reference and prayed that, this case may be decided accordingly. In support of this application, he filed an original affidavit and order dated 11-06-2019, in which he was posted as a clerk. His signature has been identified by union leader, Mr. Rafique Khan and nobody opposed this application, so application I.A. No. 3 is allowed and the union is permitted to withdraw their statement of claim and reference.So this reference is decided as withdrawn. Hence, it is ordered.

ORDER

The application for withdrawal of the case is allowed. The case is treated as withdrawn. The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 28 अक्तूबर, 2019

का.आ. 1903.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 53/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.10.2019 को प्राप्त हुआ था।

[सं. एल–22012/76/2014–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 28th October, 2019

S.O. 1903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 10.10.2019.

[No. L-22012/76/2014–IR (CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/53/2014-15 Date: 24.09.2019

Party No. 1: The Chief General Manager,
Western Coalfields Limited,
Nagpur Area, Kassturba Nagar, Jaripatka,
Nagpur-440012.

V/s

Party No. 2: The General Secretary,
Lal Zanda Coal Mines Mazdoor Union (CITU),
Branch; WCL HQ, Coal Estate, Civil Lines,
Nagpur-440001.

AWARD
(Dated:-24th September, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of Western Coalfields Limited and their Union, Lal Zanda Coal Mines Mazdoor Union (CITU) for adjudication, as per letter **No.L-22012/76/2014-IR(CM-II) dated 25.11.2014,** with the following schedule:—

> **"Whether the action of the management of Western Coalfields Limited Nagpur Area, Jaripatka, Nagpur in deducting the basic salary in respect of Sh. Gunwanta Govinda is just fair & legal? If not, to what relief the concerned workman is entitled to."**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union Lal Zanda Coal Mines Mazdoor Union ("The Union" in short) filed the Statement of Claim and the Management of Western Coalfields Limited ("Party No.1" in short) filed its Written Statement.

3. On behalf of Union, they filed statement of claim by asserting that, the workman has been medically boarded out of service w.e.f. 12.02.2013. The workman was initially appointed in Time Rated category on 16.02.1981 and thereafter he was periodically promoted as Mech. Helper Cat.II and subsequently as Mech. Fitter Cat.IV on 25.11.2005. During course of his employment in the colliery the workman had suffered some physical disability, consequently to which he was referred to PPD Medical Board, which did not find him fit for underground work and recommended for alternative duty on surface vide O.O No.24/31.12.2010.

4. According to Union, the workman was deployed to work on surface as a worker in Lamp in Cat-I with its basic wages without giving any indication of reverting him from his existing post of Mech. Fitter in Cat.IV. The wages of the

workman was reduced to lower pay scale. According to Union, workman has made several representations to the management, but no response was given to his representation.

5. According to the Union, an employee after acquiring disability is not suitable for the post he was holding, should be shifted to some other post with same pay scale and service benefits and prayed that, the action of WCL, Nagpur in deducting the basic salary of the workman and not providing pay protection of Category-IV to him while providing alternative job in Lamp room is wholly illegal and unjustified and further declare that, the workman is entitled for protection of his pay with full back wages and consequential benefits.

6. Management filed written statement asserting that, present dispute raised by the Party No.2 is not an industrial dispute as per the I.D. Act 1947. And therefore this Hon'ble Court has no jurisdiction to entertain the present case and the present case is liable to be rejected. Management also admitted that, workman's name was deleted from the Company Roll vide o/o No.800 dated 11-12/02/2013. It is also admitted that, initially the workman was appointed as Mechanical Fitter as Casual T.R. w.e.f. 16.02.1981 and was promoted as Mechanical Fitter Helper Cat.II & thereafter as Mechanical Fitter Cat.IV on 25.11.2005.

7. Management also admitted that, Party No.2 was given temporary deployment on surface with certain terms which are specifically mentioned in the order dated 24-31/12/2101 and which were duly accepted by the party no.1 and accordingly the basic pay of the Party No.2 was reduced from Rs. 551/- to Rs. 345.47/- According to management, workman was declared unfit by Medical Board on 25.01.2013 and consequent to which the name of the workmen was deleted from the Company on 11-12/02/13. It is specially submitted that thereafter the workman has raised his grievances on 06.08.2013 & 29.08.2013 which were duly replied by the WCL vide their reply dated 06.09.2013, stating therein that, as all the retirement benefits like Gratuity & Pension is already paid to the workman, now his request of payment of differences of wages cannot be considered, it is also denied that, the workman is entitled for the pay protections as per the provisions of the Persons with Disabilities Act 1995. According to Party No.1, workman is not entitled for protection as per the WCL Circular dated 22.02.2014. It is stated that, as per the WCL circular dated 11.05.2013, settled cases will not be re-open. So they prayed that, deduction in basic salary of workman is just fair & also prayed that, workman cannot claim any relief as workman is already been separated from the company role on account of medically unfit.

Point of determination:—

1. "Whether deducting the basic salary of workman is proper and legal?"

2. "Whether workman is entitled to any relief?"

Reason for decision:—

8. On behalf of workman, it was argued that, due to physical disability, he prayed for alternate duty on surface, so he was deployed to work on surface as a worker in Lamp in category-I with its basic wages without passing any order of reversion from his existing post of Mech. Fitter in Category-IV. His wages, however, came to be reduced to a lower pay scale from Rs. 551.07 to Rs. 345.67 w.e.f. 01.01.2011. This argument was denied by the management. Now, I want to see the evidence of workman.

9. On behalf of workman, Gunwanta Govinda(P.W.1) was examined to support his statement of claim. He filed exhibit W-1 to W-9 in support of their claim, but he admitted that, he was appointed as Time Rated employee on 16.02.1981. It is true to say that, "the workman was promoted as Mechanical Fitter Helper, Category-II and thereafter as Mechanical Fitter, Category-IV on 25.11.2005. During the course of employment, the workman suffered from physical disability and was referred to the Medical Board. I have not filed any disability certificate on record in this matter. It is true to say that, after the said disability, I was given alternate job on surface in lamp room by WCL vide order date 31.12.2010, which is exhibit W-8. The witness volunteers that, he used to clean the lamp room. It is true to say that, on the said post in lamp room, I used to get the salary of Rs. 345.47 from 31.12.2010. It is true to say that, again, I was examined by the Medical Board and was found unfit, which is mentioned in order dated 25.01.2013, at Exhibit W-7. It is true to say that, after the said Medical Board's Unfit order, WCL has struck out my name from services on 12.02.2013."

10. Gunwanta Govinda Gabhane (PW-1) also admitted that, he did not file any disability certificate after the order of Medical Board dated 25.01.2013. He also admitted that, "in absence of the Disability Certificates, there is nothing on record to consider, what percentage of disability, I had suffered." He also admitted that, "after 12.02.2013, WCL has paid me the gratuity and pension on the basic of reduced pay." "Whether it is correct to say that, the knowledge about the reduction in pay scale was known to you in the year 2010? I do not remember. Whether you have filed on record any circular dated 11.05.2013, 22.12.2014 and 17.03.2015, on which the reliance is placed on the claim? I have not filed the above dated circulars. I have not filed on record any document pertaining to Shri Vijay Kashinath and Shankata Prasad to demonstrate their case, was similar to my case."

11. On behalf of management it was argued that, workman name is deleted from company roll vide o/o No.800 dated 11-12/02/2013. He also argued that, workman admitted all material fact in his court statement. He also argued that,

all the retirement benefits like Gratuity & Pension is already paid to the Party No.1. According to the management i.e. Party No. 1, workman now, his request of payment of differences of wages cannot be considered. He also argued that, the provisions of 1995 as applicable to "persons with disability and hence the percentage of disability suffered by the workmen is relevant to find out his entitlement and hence section 47 needs to be construed in the light of the provisions of section 2 (f) and the extent of disability suffered by the workmen section 47 is not applicable to his case.

12. On behalf of management it was also argued that, the workmen have miserably failed to support its claim as the workmen has admitted in the cross examination that, the workmen has not filed any circular which is relevant and applicable to his case. He also argued that, there is no any employee and employer relationship between the workman and company and also argued that, action of management deducting the basic salary of the workman is just fair & legal, so he prayed that, workman cannot claim any relief, but management did not produced any oral evidence, so adverse inference may be drawn against the management. Now, I want to see the legal position on behalf of workman they relied on case law:—

Section 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (In short "the Act")

2(i) "disability" means- (a) blindness; (b) low vision; (c) leprosy – cured; (d) hearing impairment; (e) locomotor disability; (f) mental retardation; (g) mental illness.

2(t) "person with disability" means a person suffering from not less than forty percent. Of any disability as certified by a medical authority.

Hon'ble Allahabad High Court interpreted section 47 in following way —

"Section 47 protects the interest of such an employee by offering alternative job, and if it is not possible to adjust the employee against any post, he will be kept on supernumerary post until a suitable post is available or he attains the age of his superannuation, whichever is earlier. The aim of an object of enactment of section 47 of the Act, is to provide protection to such employees who have suffered disability to the extent of blindness, low vision, leprosy-cured, hearing impairment, locomoter disability, mental retardation, and mental illness. – Peer Baksha v. Regional Manager, U.P.S.R.T.Corp., Kanpur 2011(130) FLR495(Allahabad H.C.)."

W.P. No.4700/2010, Dhammadip Bhaurao Mankar vs. Union of India. Date of order 15 November 2011, in the Hon'ble High Court bench Nagpur, in which following principles were laid down:—

(a) "Provisions of above mentioned 1995 Act in Section 2(i) define "disability". Percentage of disability is not stipulated in this provision. Section 2(t) defines "persons with disability" and legislature has chosen to specify that it means a person suffering from not less than forty percent of any "disability" as certified by a medical authority."

(b) "It is because of this position only that his service conditions appear to have been protected. The legislature has stated that if on account of such disability, he is not suitable for the post which he was earlier holding, employer can shift him to some other post, "with same pay scale and service benefits". ---------- Such employee should be kept on a supernumerary post until a suitable post is available or then the employee who acquired disability attains the age of Superannuation. Thus provisions made by legislature are by way of exception to normal law and therefore show emphasis upon its intention to protect service i.e. pay scale and service benefits of person who acquired disability while in employment. It is also evident from Sub Section (2) of Section 47 which stipulates that promotion cannot be denied to such a person merely on the ground of his disability."

(c) It is, Therefore, apparent from scheme of above mentioned 1995 Act that the person who acquires disability while in employment has not been treated as "person with disability" and provisions of Section 2(t) are therefore irrelevant in his case.

13. Ongoing the document W7, it appears that this is a medical certificate issued by Medical Board on behalf of Chief Medical Officer, Head Quarter on dated 25-01-2013 and W8 issued by the Sr. Manager (Mining) Pipla Colliery Dated 24-12-2010 in which workman was deployed on surface on the basis of medical report temporary and on perusal

of the document W9 a transfer order issued by the Sr. Manager (Personnel) Silewara Sub Area on 28/30-12-2010 and according to management circular dated 11-05-2013 gave a guidelines on the basis of writ petition No. 4700 of 2010 Dhammadip Bhaurao Mankar Vs. Union of India and Others. According to workman guideline issued by the management by illegal and against the spirit of above, Act. According to him, Pay production may be given to the workman and percent of disability irrelevant and considering the pay production.

14. This argument was denied by the management with asserting that workman was given all retirement benefit, No disability certificate is filed by him to demonstrate the percentage of disability suffered and Party No. 1 make amendment in circular dated 22-02-2014 and 11-05-2013, So above amendment of prospectively and settled will not reopen. He also argue that workman has been separated company roll and having accepted of the terminal dues and above case law not applicable in this case so workman did not entitle to any relief.

15(a). In Case of Geetaben Ratilal Patel Vs. District Primary Education Officer, (MANU/SC/0616/2013) in which Hon'ble Supreme Court held that, "Commissioner having declared order of dismissal as void, it was not open for High Court to interfere with such order of Commissioner and to restore illegal order of dismissal--Order passed by Commissioner—Upheld--Authorities directed to reinstate appellant in service immediately and to pay her regular salary every month--Order passed by Single Judge and Division Bench of High Court--Set aside". ---------- "Empower the Commissioner, to look into the complaint with respect to the matters relating to deprivation of rights of persons with disabilities and non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions issued by the appropriate Governments or local authorities and to take up the matter with the appropriate authorities for the welfare and protection of rights of persons with disabilities including matter relating to dispensation with service or reduction in rank".

(b) "There is nothing on the record to suggest that, the respondent authority got the appellant examined by a Government Doctor to determine the duty to be assigned to her. In view of her reinstatement, now the respondent authority may get opinion of the doctor for assigning her duty. In case the appellant is not in a position to perform the normal duty because of her mental condition, the competent authority will apply proviso to section 47 (1) of the said act.

(c) In the case of Kunal Singh Vs. Union of India, Hon'ble Supreme Court held that, "Language of section 47 is plain of certain casting statutory obligation on the employer to protect an employee acquiring disability during service. The argument of the learned counsel for the respondent on the basis of definition given in Section 2(t) of the Act that benefit of section 47 is not available to the appellant as he has suffered permanent invalidity cannot be accepted. Because, the appellant was an employee, who has acquired 'disability' within the meaning of Section 2(i) of the Act and not a person with disability".

(d) It being a special enactment, doctrine of generalia specialibus non derogant would apply. Hence rule 38 of the Central Civil Services (Pension) rules cannot override section 47 of the Act. Further section 72 of the Act also supports the case of the appellant, which reads :— "72. Act to be in addition to and not in derogation of any other law. The provisions of this Act, or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities.

We agree with the principle laid down in the above case laws.

16. On behalf of management, it was argued that, workman was deleted from the company roll and the retirement benefit like Gratuity and pension already paid, no disability certificate is filed by him to demonstrate the percentage of disability, he was deleted from the company roll and there is not industrial dispute so this tribunal has no jurisdiction. This argument was denied by the worker.

17. Now, I want to see related facts to this argument.

(a) Workman produces W-7 as a medical board report of WCL dated 25-01-2013 in which, he was declared unfit. Exh. W-8 order of Western Coal Field Limited i.e. Party No.1 in which, workman by deployed on the surface duty until for further order as a "lamp room" Exh. W-9 shows that, he was transferred on 28/30-12-2010 from Pipla Mines to Silewara on the recommendation of medical board, but workman did not file any disability certificate as provide under Act in 2(i), 2(t) which is a suit by

medical authority as per 2(p) of the above act. His case is not decided by "Chief Commissioner", "Commissioner or competent authority as provided under section 57, 60 and section 2(h) of this act, so in my opinion this tribunal has no jurisdiction to protect the wages of workman the basic directly.

(b) Judging the present position and touchstone of the above case laws, it appears that, workman did not file disability certificate. It also appears that, he retired on 12-02-2013, but he applied before party No. 1 on 06-08-2013. As soon Exh. W-5 after retirement. On perusal of the above provision, it appears that, workman is not entitled as his wage protection under above act. It also appears that, he did not comply the provision of above act, so in my humble opinion, this tribunal has no jurisdiction to passed an order directly against party No.1, because workman did not avail remedy has provided in the above Act, so in my opinion, this reference is answered in negative and workman is not entitled to any relief, hence it is ordered.

ORDER

The reference is answered in the negative and against the petitioner. The petitioner is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 29 अक्तूबर, 2019

का. आ. 1904.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 88/2013—14) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.10.2019 को प्राप्त हुआ था।

[सं. एल—41011/05/2014—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 29th October, 2019

S.O. 1904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2013-14*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 29.10.2019.

[No. L-41011/05/2014– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/88/2013-14 Date: 06.09.2019

Party No. 1: The Divisional Commercial Manager,
South East Central Railway,
Kingsway,
Nagpur.

V/s

Party No. 2: Shri Rajesh Supatkar, General Secretary,
Parcel Porters Sanghathan,
New Mankapur, Plot No.37, Near Mhada Colony,
Nagpur (M.S)-440030.

AWARD

(Dated: 06th September, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of South East Central Railway and their Union, Parcel Porters Sanghathan for adjudication, as per letter **No. L-41011/05/2014-IR (B-I) Dated 25.02.2014,** with the following schedule:-

> **"Whether the action of the Senior Divisional Commercial Superintendent, South East Central Railway, Nagpur in seizure the badge of Shri Sham Hiraman Dhamgaye, Porter of Gondia Railway Station and debar for the post of gangman as per policy of Railway Board letter dated 01.04.2008 is just fair & legal? If not, to what relief is entitled to the concerned workman."**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union Parcel Porter Sanghathan ("The Union" in short) filed the Statement of Claim and the Management of South East Central Railway ("Party No.1" in short) filed its Written Statement.

3. The Union filed their statement of claim by asserting that, it is a Registered Trade Union under the Trade Union Act. 1926. The Regd. No. of the Trade Union is vide No. NGP/4403 dated 29.07.1997 and the policy decision by the Railway Board to Appoint licensed porters to the Post of Gangman in Railway with certain liberal condition and on ONE TIME measure policy announcement made by the then Honorable Minister of Railway in Parliament. According to this policy, licensed porter will be considered for appointment that possessed a valid license in terms of extant rules as on 26.02.2008.

4. According to union, the workman paid the License fee for obtaining it and regularly and continuously renewed his license. It is evident on record for payment of such license fee and there by the workman was also issued Valid Identity Card by the Railway and as per Railway Recruitment Rules the Minimum educational qualification is VIII Std. This is also relaxed on the policy.

5. According to union, the appointment will be subject to surrendering the license and Badge and right to be a licensed porter. No subsequent transfer of license would be allowed. They also asserted that, the Screening Committee without extending him employment taken back his valid license & Badge is illegal and the license Badge No.13 was NOT RETURNED TO THE WORKMAN and he was earning his bread through porter age at Gondia Railway Station, but this was snatched his valid license is illegal. According to union the license porter should be medically fit for the post of Gang man and the genuineness and authenticity of every claimant as a license porter for appointment is to be established and authenticated by the Sr. D.C.M. According to union workman paid license fees up to 09.04.2012 continuously, so they prayed that, workman is an Eligible candidate covering all the pre-conditions for the post of Gang man as per the Railway Board Policy guideline RBE50/2008 dated 01.04.2008 extended on policy and ONE TIME MEASURE and also prayed that, the job was available workman was prevented by way of seizure of badges from the workman who appeared before the selection committee for adjudge the post of gang man. They also prayed that, selection committee is come in per view of conduct of unfair labour practice & seizure of the badge is violation of Railway letter dated 01.04.2008.

6. Party No. 1 filed W.S by denying all material fact that, workman is a member of parcel porter sanghathan and parcel porter sanghathan is a Registered Trade Union, so they prayed that, union has no "locus-standi" to prefer the present statement of claim, there being no relationship as workmen/employer between he allegedly made parties to the present statement of claim. They also prayed that, present statement of claim is "void abinitio", so it is not tenable. According to them deserves to be dismissed summarily.

7. According to management (Party No.1), workman failed to execute the work of license porter and not renewed his license which consequently resulted in termination of license as license porter also, as the workman is not interest to do the work as license porter. They also prayed that, present statement of claim is not covered under the definition of workman. They also asserted that, Railway Board Circular under No. RBE50/2008 is misconceived, because only those license porters will be considered for appointment who were possessing a valid license/Badge in terms of extant rules as on 26.02.2008 i.e. the date of announcement made by the Hon'ble Minister in the Parliament.

8. According to party no.1, workman possessed the valid license in terms of extant rules as on 26.02.2008. It is denied that, the Screening Committee has wrongly interpreted the remarks. The workman never approached to the Railway Administration with relevant documents and record for transfer of Badge showing the dependency of family, nomination with relationship. It is denied that, Railway Administration has issued a valid Identity Card to the workman and workman never approaches to the Railway Administration for transfer of said Badge in his favour.

9. According to Party No.1, workman was never engaged for doing the work of Parcel Porter at any point of time. The workman was engaged as license porter by specific notification dated 08.08.1994. According to Party No.1,

workman by citing the irrelevant examples in the system of Railway and averments made in para 11,12,13,14 are denied in toto being false. According to Railway, the Screening Committee after scrutiny and verification has observed that, the workman did not possess the valid license and therefore, not fulfilled the requisite criteria in terms of Railway Board's Circular. Therefore, the claim of the workman was not considered by the Railway Administration and prayed that, workman not entitled any relief and application of the workman is devoid any merit, so according to them, the same is liable to be dismissed with exemplary cost.

10. Union filed rejoinder near about same footing of statement of claim. According to union it is unfortunate that, management did not gone properly and contradicts his own Panel of eligibility criteria prepared by his own department staff before sending the panel to Selection Committee for proper adjudge the recommended candidate as gangman. They also asserted that, the license & Badge obtained by him after due License fee duly paid to Railway administration. The License was time to time renewed by the administration. According to them Screening Committee is not deciding authority. The surrender of Badge is for adjudge to gangman in Railway on time exemption & relaxation in Recruitment Rules.

11. According to union, the applicant is not at all workman and he did not claim any post on his own will and pleasure and also asserted that, the license once obtained is his own property till further renewal or voluntary surrender. Applicant surrender to his license with a motive to get permanent job on Railway on one time, he also asserted that, management did not follow Rules and Railway Board's guidelines and on suo-motto snatched his Badge and license is unfair and illegal and pray that, award will be passed as per prayer in statement of claim.

Point of determination:-

1. "Whether Railway illegally debarred the workman of a post of Gangman?"

2. "Whether workman is entitled to any relief?"

Reason for decision:-

12. On behalf of the workman, he examined himself i.e. Shyam Hiraman Dhamgaye (P.W.1) to support his statement of claim and on behalf of the Party No. 1, they examine Smt. K. Mangamma Rao, who were working as Chief Office Superintendent in S.E.C. Railway Nagpur. Now, I want to see argument with respect to their evidence.

13. On behalf of the workman, it was argued that, he possess valid license of porter and license is obtained by him from his uncle Bhanudas Meshram, but the Party No.1 i.e. Divisional Railway Manager Commercial, S.E.C wrongly interpreted the circular issued by the Railway Board, these facts are supported by the workman's court statement i.e. affidavit on evidence (P.W.1) and in para no. 18 to 21 of his cross-examination he admitted that, money received to P.1 and P.2, he can read and write. He also admitted that, Bhanudas was his uncle, but he was not his real uncle. He also admitted that, "he was my neighbor; he loved me and supported me as son." He also admitted that, he neither real son of Bhanudas nor adopted. According to him, his father's name is Hiraman Dhamgaye. He was not his blood relative, he do not know rules and regulations for transferring the badge of Railway. He denied that, badge was not transferred in favour of him legally and also denied that, he had never approached to the railway administration for transferring of badge in his favour. He also denied that, he is not eligible as "I was not holding the valid license as per rules, therefore the Screeninng Committee had found me ineligible".

14. Shyam Hiraman Dhamgaye (P.W.1) in para 22 of his cross-examination asserted that, "it is not true to say that, I had not worked with the railways as a licensed coolie. The witness volunteers that, I worked for 7 years as a parcel porter. I have filed documents on record to show that I had worked for 7 years-------It is not true to say that, no such receipts at Exhibit P-2 incorporating the name in the receipts on behalf of the railway-----It is not true to say that, the railway never issues any receipt on personal name". On perusal of the P.1 and P.2 it appears that, Identity card issued in the format of railway but carry no signature and P.2 shows the deposit receipt of 20 persons of Rs. 60/- and it shows the name of workman against the badge number 49, but no document is filed to prove that, he is the valid licensed porter of railway at Gondia. Ongoing above discussion, I came to conclusion that, he was not real or adapted son of the previous licensed porter (coolie) Shri Bhanudas Meshram. Now, I want to see the management's evidence.

15. On behalf of the management, Smt. K. Mangamma Rao was examined as a Chief Office Superintendent of S.E.C. Railway. She was deposing this affidavit on the basis of the information derived from the office record. According to her, license was issued by Divisional Commercial Manager and genuineness of the license was verified by Sr. D.C.M. Nagpur. She also admitted that, "I filed my authority letter to give my statement in this case on 24.07.2018, which is marked as M-1. I have also not brought this with me. I do not know who the parcel Chief Supervisor was in 2005 at Gondia". She also asserted that, Railway Board defines relatives of the license porter in circular dated 09.12.1988. According to her, she is not in position to tell "whether uncle comes in per view of near relative". In para 26 she admitted that, railway issued license of porter in favour of late Bhanudas Meshram, she also admitted that, there is difference between blood relation and near relative. She also asserted that, "workman never issued any license nor issued any badge, so no letter was given to the workman regarding invalid license". On going above discussion it appears that,

she has neither enmity with workman nor she favored management out of way. In this way, her Statement remains unrebutted, so it appears to be true.

16. On going above discussion, I came to conclusion that, Workman/Union failed to prove that, he is valid successor of Bhanudas who was previous license holder and also failed to prove that, as per Railway Board Circular dated 09.06.2014 and 09.12.2018, he was entitled to legally transfer License/Badge from previous license holder Shri Bhanudas, so workman was not holder of valid license.

17. On behalf of the workman, it was argued that, Management illegally debars the workman for the post of Gangman as per policy of Railway Board. He also argued that, the union is a Registered Trade Union and workman is a member of this Union. He filed copy of the certificate of Registration and Management denied this argument. I want to see the management's evidence on this point.

18. Smt. K. Mangamma Rao (M.W.1) in para 23 of her cross-examination admitted that, she didn't know how many unions are working in Central Railway, Nagpur. On the contrary, workman asserted in para no.12 in his chief-examination regarding registration and member of the union, but he was not Cross-examined by the management on this point; Party No1 did not produced any positive evidence in support of their defence. On the contrary workman filed Xerox copy of the registration certificate and membership form, so adverse inference can be drawn against the management. so argument of workman is sustainable that, he was a member of Registered Trade Union.

19. On behalf of the workman, they relied on following case laws:—

(1) The Senior Divisional Commercial vs. The General Secretary, Hon'ble Bombay High Court, Writ Petition No. 4472/2008 date of judgment 14 October 2009.

(2) Smt. Aasha vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench, Writ Petition No. 1340 of 2011, date of order 23.06.2011, (D.B)

(3) Smt. Maya vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench W.P. No. 1333/2011, date of order 20 June 2011, (D.B).

(4) Whether Reporters of Local Papers Rajusingh Joraji vs. Senior Division Commercial Manager, Hon'ble Gujrat High Court Bench Ahmadabad, C/SCA/19944/2015, date of judgment 28 September 2017.

Hon'ble High Court laid down on following principles:—

(a) There is no dispute that the Railways carry on its business of transportation and earns huge profit from the said business, so also from transportation of passengers. It is the case of the petitioner Railways itself that they provided license to the licensed porters, recovered security deposits as well as license fee regularly, has power to cancel the license in case of misconduct or as the case may be. It has power to regulate and control the activities of licensed porters on platforms. It has power to fix the remuneration which the licensed porters can receive from the passengers. Not only that, even according to the petitioner, the licensed porter as per the exigencies are engaged to perform the work of parcel porters and that was done initially for 4 hours and thereafter 8 hours and his entire work is done upon the direction of the Railways and its officers and there is a full control over the same.

(b) The manual work is performed by the licensed porters as well as parcel porters and this is the systematic activity of cooperation between the employer and the workmen. As a matter of fact, the petitioner Railways did not lead any evidence before the tribunal to show as to how the activities undertaken by the petitioner Railways and the work required to be performed as aforesaid by the licensed porter and the parcel porters would not fall in the definition of 'Industry' and ' workman' under the Industrial Disputes Act. In the absence of any rebuttal evidence and appropriate pleading to refute the claim of the members of the respondent Union that they are workmen, I hold that the members of the respondent Union are workmen and entitled to maintain the reference before the tribunal.

(c) Since the petitioner Railways did not fairly produce the entire material before the Tribunal, it will be appropriate to compensate the respondent Union by asking the petitioner Railways to pay costs.

(d) The issue whether members of Respondent Union are workmen or not is decided against the petitioner by me and shall not be tried by the tribunal again.

(e) Before allowing such transfer of license, it should be ascertained that the porter has the sole earning member of the family. An affidavit produced by the licensed porter under the seal of a Magistrate may

be taken as adequate proof of the dependence of the family on licensed porter and the nature of relationship of the nominee.

(f) The application of any law or any rule has to be designed to doing real and substantial justice. More particularly, in interpreting and applying benevolent schemes and welfare oriented policy resolutions, the purposive approach is advocated. The function of purposive application of any rule or law HC-NIC page 6 of 10 Created on Sat Oct. 07 05:05:27 IST 2017 is to iron out technicalities in granting benefit of the provision or policy. The entitlement of the petitioner was not in dispute.

(g) There is no gainsaying that when the question is of application of any welfare scheme, the purposive construction should deservedly must be further informed by liberal approach in interpretation and application of the provisions. ----------The aim of the policy is to provide relief to the family of the porter who has become infirm or who has died, by permitting transfer of his Badge or Buckle in favour of near relatives.

(h) Senior Division Commercial Manager, Western Railway, Ahmadabad, and the reasons supplied therein are hereby set aside. It is held and declared that the petitioner is entitled to the benefit of the policy and is further entitled to be transferred the Buckle No. 163 of his grandfather Kacharaji Chaturji Thakor. The respondents are directed to transfer the said Buckle No. 163 in the name of the petitioner as he is held to be covered under the policy. The respondents are directed to give benefit to the petitioner of the policy by transferring Buckle No. 163 in his name.

20. The union relied case laws: U.O.I. Vs. Ram Chandra Tanti WPCT Nos. 124 to 126/200 order dated 29.03.2004, National Federation of Railway Porters Vs. Union of India 1995 II LLJ 712 and A.I. Railway parcel and Goods Porters Union vs. Union of India W.P.(Civil) No. 433/1998 date of order 22.08.2003, in which, Hon'ble Lordship hold that, "One big point of difference between the two sets of porters is the fact that while one set is being paid for their services by the passengers directly, the other set is being paid for their labour by the authorities of the railway.

21. On going above discussion, my humble opinion is that, as far as license porter is concerned, there is special rules and regulations of the Railway and there is no contract between Railway and the workman, because workman is not a valid license porter, so in my opinion, provision of section 25 of Indian Contract Act is not attracted in this case, so argument of workman's advocate is not sustainable, because he does not possess valid license of licensed porter and also considering Railway Board Circular. In my opinion, he is not entitled to be appointed as a Gangman as per scheme of Policy No.RBE50/2008 issued by the Railway, because workman in not valid successor of previous license porter, Shri Bhanudas Meshram. It also appears that, there is no valid relationship between workman and management (Party no.1) and in my opinion; he is not entitled to any compensation. Hence it is ordered.

ORDER

The action of the Senior Divisional Commercial Superintendent, South East Central Railway, Nagpur in seizure the badge of Shri Sham Hiraman Dhamgaye, Porter of Gondia Railway Station and debar for the post of gangman as per policy of Railway Board letter dated 01.04.2008 is just fair & legal. The workman is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 29 अक्तूबर, 2019

का. आ. 1905.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व मध्य रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 01/2014—15) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.10.2019 को प्राप्त हुआ था।

[सं. एल—41012/01/2014—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 29th October, 2019

S.O. 1905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2014-15*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Nagpur as shown in the Annexure, in the industrial dispute between the management of South East Central Railway and their workmen, received by the Central Government on 29.10.2019.

[No. L-41012/01/2014– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE SHRI S.S. GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/01/2014-15 Date: 06.09.2019

Party No. 1: The Divisional Commercial Manager,
South East Central Railway,
Kingsway,
Nagpur.

V/s.

Party No. 2: Shri Rajesh Supatkar,
General Secretary,
Porters Sanghathan, New Mankapur,
Plot No. 37, Near Mhada Colony,
Nagpur – 440030.

AWARD
(Dated: 06th September, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of South East Central Railway and their Union, Porters Sanghathan for adjudication, as per letter **No. L-41012/01/2014-IR (B-I) dated 19.03.2014,** with the following schedule:-

> **"Whether the action of the Senior Divisional Commercial Superintendent South East Central Railway, Nagpur in seizure the badge of Shri Devraj Chandan Nandeshwar, Porter of Gondia Railway Station and debar for the post of Gangman as per policy of Railway Board letter dated 01.04.2008 is just fair & legal? To what relief is entitled to the concerned workman?"**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the Union Parcel Porters Sanghathan("The Union" in short) filed the Statement of Claim and the Management of South East Central Railway("Party No.1" in short) filed its Written Statement.

3. On behalf of the Union, workman filed Statement of Claim with asserting that, he raised his dispute through Parcel Porter Sanghathan, which is registered Trade Union. According to workman, Railway issued one time relaxation on Railway Recruitment Policy through Railway Board to appoint licensed porter for the post of Gang man in Railway with the certain liberal conditions.

4. As per the Railway Policy, the licensed porter will be considered for appointment who possessed a valid license. According to workman, he possessed valid license Badge No.13 and badge transfer was taken properly. He paid license fees for obtaining License and continuously renewed his license and Railway issued a valid Identity Card to him. Appointment will be subjected to surrendering the license and badge and right to be a licensed porter.

5. According to the workman, he appears before Screening Committee of the Commercial department to ensure the eligibility of his candidature and he deposited his license and badge, but they do not return them even after cancellation of his candidature. According to him, the genuineness and authenticity of every claimant as a licensed porter for appointment is to be established and authenticated by the Sr. D.C.M. According to workman, Committee deliberately over ruled the Railway Board's Policy guideline, which amounted to unfair labour means of the selection authority, so he prayed that, he is entitled 'lay-off', because he is sole earning member of his family and he prayed that, he should paid compensation of wages for such lay-off.

6. By filing written statement Party No.1 denied that, workman is member of the Parcel Porter Sanghathan, there is any labour exploitation and there is any violation of establishment rule. Workman failed to execute the work of licensed porter and not renewed his license, which consequently resulted in termination of license as licensed porter. According to Party No.1, workman is not covered under the definition of workman under Industrial Dispute Act, he is simply a licensed porter engage in terms of notification of 1994 and thereafter the agreement was executed between the parties and there is no relationship as employee and employer as alleged in the statement of claim, so workman's claim deserves to be dismissed with cost.

7. Party No.1 also denied that, the Railway Board Circular under No.RBE50/2008 is misconceived and Screening Committee has observed that, applicant was not having the valid license to work as a Licensed Porter, because Badge can be transferred to his son or adopted son, brother or brother's son or wife's brother. In this way management prayed that, workman is not entitled for any relief as prayed for, hence application of the claimant is devoid any merit, the same is liable to be dismissed with exemplary cost.

8. The union filed re-joinder in same footing as per statement of claim. In re-joinder union stated that, non-applicant i.e. party no.1 deliberately overlooked the opportunity and now, he makes all his hue & cry before this Hon'ble Tribunal to confused and mislead this Tribunal. According to him, license is time to time renewed by administration. They also asserted that, Party No.1 club the issue of license and surrender of license, but both are different. According to them, Party No.1 did not follow the rules and Railway Board's guidelines and on suo-motto snatched his Badge & license is unfair and illegal and prayed that, Tribunal may pleased to award of adjudged gang man at par with others in the same panel with retrospective effect.

Point of determination:—

1. "Whether Railway illegally debar the workman of a post of Gangman?"
2. "Whether workman entitled any relief?"

Reason for decision:—

9. On behalf of the workman, it was argued that, workman got his license legally i.e. license was obtained by the workman under Uncle and Nephew rule of Commercial Circular of the Railway and he work as a licensed porter on Railway Platform to carry the passenger's luggage. Railway issued an Identity Card, License, Metal Badge and money received for license fee. Workman also examined himself in support of his Statement of Claim. Now, I want to see the evidence of workman.

10. Deroraj Nandeshwar(P.W.1) in his court statement prove that, money received to P.1 and P.2, but he admitted that, he could not read and write. He also admitted that, Narayan was his uncle, but he was not his real uncle. He also admitted that, "he was my neighbor; he loved me and supported me as son." He also admitted that, he neither real son of Narayan nor adopted. According to him, his father's name is Chandan Nandeshwar. Ongoing above evidence, I came to conclusion that, he was not real or adapted son of the previous licensed porter (coolie) Shri Narayan. Now, I want to see the management's evidence.

11. On behalf of the management, Smt. K. Mangamma Rao was examined as a Chief Office Superintendent of S.E.C.Railway. She was deposing this affidavit on the basis of the information derived from the office record. According to her, license was issued by Divisional Commercial Manager and genuineness of the license was verified by Sr. D.C.M. Nagpur. She also admitted that, Railway issued license in favour of late Narayan Undirwade. She also asserted that, Railway Board defines relatives of the license porter in circular dated 09.12.1988. According to her, she has no authority to include any person as a near relative or a blood relative. According to her, workman neither issued any License nor Badge. In this way, her Statement remains unrebutted, so it appears to be true.

12. On going above discussion, I came to conclusion that, Workman/Union failed to prove that, he is valid successor of Narayan who was previous license holder and also failed to prove that, as per Railway Board Circular dated 09.06.2014 and 09.12.2018, he was entitled to legally transfer License/Badge from previous license holder Shri Narayan, so workman was not holder of valid license.

13. On behalf of the workman, it was argued that, Management illegally debars the workman for the post of Gang man as per policy of Railway Board. He also argued that, the union is a Registered Trade Union and workman is a member of this Union. He filed copy of the certificate of Registration and Management denied this argument. I want to see the management's evidence on this point.

14. Smt. K. Mangamma Rao (M.W.1) in para 23 of her cross-examination admitted that, she didn't know how many unions are working in Central Railway, Nagpur. On the contrary workman asserted in para no.12 in his chief-examination regarding registration and member of the union, but he was not Cross-examined by the management on this point, so argument of workman is sustainable that, he was a member of Registered Trade Union.

15. On behalf of the workman, they relied on following case laws:—

(1) The Senior Divisional Commercial vs. The General Secretary, Hon'ble Bombay High Court, Writ Petition No. 4472/2008 date of judgment 14 October 2009.

(2) Smt. Aasha vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench, Writ Petition No. 1340 of 2011, date of order 23.06.2011, (D.B)

(3) Smt. Maya vs. Chairman of Railway Board, Hon'ble Bombay High Court, Nagpur Bench W.P.No. 1333/2011, date of order 20 June 2011, (D.B).

(4) Whether Reporters of Local Papers Rajusingh Joraji vs. Senior Division Commercial Manager, Hon'ble Gujrat High Court Bench Ahmadabad, C/SCA/19944/2015, date of judgment 28 September 2017.

Hon'ble High Court laid down on following principles:—

(a) There is no dispute that the Railways carry on its business of transportation and earns huge profit from the said business, so also from transportation of passengers. It is the case of the petitioner Railways itself that they provided license to the licensed porters, recovered security deposits as well as license fee regularly, has power to cancel the license in case of misconduct or as the case may be. It has power to regulate and control the activities of licensed porters on platforms. It has power to fix the remuneration which the licensed porters can receive from the passengers. Not only that, even according to the petitioner, the licensed porter as per the exigencies are engaged to perform the work of parcel porters and that was done initially for 4 hours and thereafter 8 hours and his entire work is done upon the direction of the Railways and its officers and there is a full control over the same.

(b) The manual work is performed by the licensed porters as well as parcel porters and this is the systematic activity of cooperation between the employer and the workmen. As a matter of fact, the petitioner Railways did not lead any evidence before the tribunal to show as to how the activities undertaken by the petitioner Railways and the work required to be performed as aforesaid by the licensed porter and the parcel porters would not fall in the definition of 'Industry' and ' workman' under the Industrial Disputes Act. In the absence of any rebuttal evidence and appropriate pleading to refute the claim of the members of the respondent Union that they are workmen, I hold that the members of the respondent Union are workmen and entitled to maintain the reference before the tribunal.

(c) Since the petitioner Railways did not fairly produce the entire material before the Tribunal, it will be appropriate to compensate the respondent Union by asking the petitioner Railways to pay costs.

(d) The issue whether members of Respondent Union are workmen or not is decided against the petitioner by me and shall not be tried by the tribunal again.

(e) Before allowing such transfer of license, it should be ascertained that the porter has the sole earning member of the family. An affidavit produced by the licensed porter under the seal of a Magistrate may be taken as adequate proof of the dependence of the family on licensed porter and the nature of relationship of the nominee.

(f) The application of any law or any rule has to be designed to doing real and substantial justice. More particularly, in interpreting and applying benevolent schemes and welfare oriented policy resolutions, the purposive approach is advocated. The function of purposive application of any rule or law HC-NIC page 6 of 10 Created on Sat Oct. 07 05:05:27 IST 2017 is to iron out technicalities in granting benefit of the provision or policy. The entitlement of the petitioner was not in dispute.

(g) There is no gainsaying that when the question is of application of any welfare scheme, the purposive construction should deservedly must be further informed by liberal approach in interpretation and application of the provisions. ----------The aim of the policy is to provide relief to the family of the porter who has become infirm or who has died, by permitting transfer of his Badge or Buckle in favour of near relatives.

(h) Senior Division Commercial Manager, Western Railway, Ahmadabad, and the reasons supplied therein are hereby set aside. It is held and declared that the petitioner is entitled to the benefit of the policy and is further entitled to be transferred the Buckle No. 163 of his grandfather Kacharaji Chaturji Thakor. The respondents are directed to transfer the said Buckle No. 163 in the name of the petitioner as he is held to be covered under the policy. The respondents are directed to give benefit to the petitioner of the policy by transferring Buckle No. 163 in his name.

16. The union relied case laws: U.O.I. Vs. Ram Chandra Tanti WPCT Nos. 124 to 126/200 order dated 29.03.2004, National Federation of Railway Porters Vs. Union of India 1995 II LLJ 712 and A.I. Railway parcel and Goods Porters Union vs. Union of India W.P.(Civil) No. 433/1998 date of order 22.08.2003, in which, Hon'ble Lordship hold that, "One big point of difference between the two sets of porters is the fact that while one set is being paid for their services by the passengers directly, the other set is being paid for their labour by the authorities of the railway.

17. On going the above discussion, my humble opinion is that, as far as license porter is concerned, there is special rules and regulations of the Railway and there is no contract between Railway and the workman, because workman is not a valid licensed porter, so in my opinion provision of section 25 of Indian Contract Act is not attracted in this case, so argument of workman's advocate is not sustainable, because he does not possess valid license of licensed porter and also considering Railway Board Circular. In my opinion, he is not entitled to be appointed as a Gangman as per scheme of Policy No.RBE50/2008 issued by the Railway, because workman is not valid successor of previous licensed porter Shri Narayan. It also appears that, there is no valid relationship between the workman and management (Party no.1) and in my opinion he is not entitled to any compensation. Hence it is ordered.

ORDER

The action of the Senior Divisional Commercial Superintendent South East Central Railway, Nagpur in seizure the badge of Shri Devraj Chandan Nandeshwar, Porter of Gondia Railway Station and debar for the post of Gangman as per policy of Railway Board letter dated 01.04.2008 is just fair & legal. The workman is not entitled to any relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 29 अक्तूबर, 2019

का. आ. 1906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय रिजर्व बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकता के पंचाट (संदर्भ संख्या 12/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.10.2019 को प्राप्त हुआ था।

[सं. एल–12011/23/2005–आईआर (बी–1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 29th October, 2019

S.O. 1906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2010*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Kolkata as shown in the Annexure, in the industrial dispute between the management of Reserve Bank of India and their workmen, received by the Central Government on 29.10.2019.

[No. L-12011/23/2005– IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 12 of 2010

Parties: Employers in relation to the management of Reserve Bank of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mrs. Jonai Sain, Joint Legal Adviser with Mr. Sanjoy Dey, Assistant Manager.

On behalf of the Workmen : Mr. Aniban Kar, learned counsel with Mr. A.K. Das, President of Reserve Bank Employees' Co-opt Canteen Workers Union.

State: West Bengal. Industry: Banking.

Dated: 30th September, 2019.

AWARD

By Order No.L-12011/23/2005-IR(B-I) dated 18.09.2009 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Reserve Bank Reserve Bank of India in terminating the services of S/Shri Bipad Bhanjan Sarkar, Arun Kumar Das, Amal Kr. Dey and Nipu Das is justified? If not, what relief the workmen concerned are entitled to?"

2. After receipt of order of reference from the Central Government notices were issued by this Tribunal to all concerned parties whereupon the unions filed their statement of claims. The Reserve Bank Employees Cooperative Canteen Ltd. Workers Union, Kolkata stated in its statement of claims that the employees concerned, Shri Arun Kumar Das, Tea Boy, Shri Bipad Bhanjan Sarkar, Assistant Cook, Shri Amal Kumar Dey, Tea Boy and Shri Nipu Das, Tea Boy had been employed by the management of Reserve Bank Employees Cooperative Canteen Ltd and had been discharging their duties in terms of their respective appointments. Shri Arun Kumar Das and Shri Bipan Bhanjan Sarkar were also President and Secretary respectively of the union, Reserve Bank Employees Cooperative Canteen Ltd. Workers Union and Shri Amal Kumar Das and Shri Nipu Das were Vice President and Secretary of the Reserve Bank Employees Cooperative Canteen Ltd. Employees Union. They were working in the canteen run through Reserve Bank of India Cooperative Canteen Ltd. the union had raised their demand to the Regional Director, Reserve Bank of India for regularization of services of the canteen employees run through the Cooperative canteen Limited as employees of Reserve Bank of India and also for equal status, pay and other benefits to the canteen employees, but the authority did not take any step in this regard. Therefore, the union raised a dispute submitting a petition before the Assistant Labour Commissioner. During conciliation proceedings several meetings were held between the parties. However, Secretary of the Reserve Bank Employees Cooperative Canteen Ltd. (hereinafter call as the said canteen) issued suspension orders of above four employees during pendency of conciliation proceeding. Chargesheets were also issued by the Secretary to the abovenamed four employees who sent their replies to the chargehseets. During conciliation meetings in the office of the Assistant Labour Commissioner, Kolkata the fact of victimization of above office bearers of the union by the management was brought to the notice of the Assistant Labour Commissioner, Kolkata who instructed the canteen management to examine the issue and not to continue with any disciplinary proceeding till disposal of the conciliation proceed, but the management of the canteen arbitrarily continued the disciplinary action against the four employees and appointed an Enquiry Officer to conduct the departmental enquiry. The employees concerned raised objection against the action of the canteen management and by sending a letter dated 27.09.2004 requested the Enquiry Officer to adjourn the departmental enquiry till further notice from the office of the Assistant Labour Commissioner. The management of the canteen refused and neglected to comply with the statutory provisions of Section 33 of the Industrial Disputes Act, 1947 (hereinafter called as the Act of 1947) and proceeded *ex parte* in the departmental enquiry and finally passed an order of dismissal of the employees under reference on 18th March, 2005. The Secretary of the said canteen also issued letters to the above four employees along with three cheques amounting to Rs.2558/= in favour of Shri Bipad Bhanjan Sarkar, Rs.2124/= in favour of Shri Arun Kumar Das, Rs.1540/= in favour of Shri Nipu Das and claiming dues of Rs.25581.80 from Shri Amal Kumar Dey as full and final settlement of the dues consequent upon their dismissal from services. The employees concerned submitted their letters of protest and non-acceptance of cheques. The Applicant union submitted a petition dated 04.04.2005 under Section 33A of the Act of 1947 to the Assistant Labour Commissioner, Kolkata requesting to pass orders under Section 33A of the Act of 1947 against the order of dismissal. It is also stated in the statement of claim that the action taken by the management in changing the service condition of the office bearers of the union by way of issuing orders of dismissal from services during pendency of the conciliation proceeding without taking prior approval is bad in law and is liable to be set aside. Upon submission of failure report by the Assistant Labour Commissioner, Kolkata the Central Government referred the dispute to this Tribunal for adjudication.

3. The Reserve Bank Employees Cooperative Canteen Employees Union, Kolkata also filed its statement of claim raising identical issues on same set of facts.

4. The Reserve Bank of India filed its written statement pleading *inter alia* that there is no employer – employee relationship between the Reserve Bank and employees of Cooperative Canteen. The condition precedent for invoking jurisdiction of machinery under the Act of 1947 is that the existence of employer – employee relationship. The dispute has not been raised by the workmen employed by the bank, nor it has been espoused by any union representing the workmen of the bank. The Central Government has got no authority or jurisdiction to refer the matter to this Tribunal. The persons under reference were employed to do the work for the cooperative canteen and their employer is management of the cooperative canteen registered under the concerned state legislation and therefore, State Government is the appropriate Government in respect of disputing employees. The bank for the benefit of its staff has made an arrangement for canteen facility to its Class-III and Class-IV employees. There is no obligation either under any statute or otherwise for the bank to run the canteen. It is so done only as a welfare measure, the bank bears by way of subsidy to the extent of 95% of the cost incurred by the canteen for the payment of salary, provident fund contribution, gratuity,

uniform etc and also provides premises, fixtures, utensils, furniture, electricity, water etc free of charge. The persons employed for doing work in the canteen are not employees of the bank, but of the Reserve Bank Employees Cooperative Canteen Ltd., a society registered under the Societies Registration Act. The canteen is run and managed by the management of the said canteen who employs their staff for doing the work for canteen under their control and supervision. The bank only provides financial subsidy to the said canteen and is no way connected with the day to day running, management or administration of the canteen. The answering bank has no right to take any disciplinary action or to direct any canteen employee to do any particular work. During conciliation proceedings the answering bank had made clear before the conciliation officer that the employees of the canteen are not the employees of the bank. Thereafter the employees of the canteen preferred a writ petition before the Hon'ble High Court at Calcutta in which the Hon'ble Court had directed the Central Government to refer the matter under the provisions contained in Section 12 (5) of the Act of 1947. By an order passed in CO No. 11488 (W) of 1983 it has been held that the employees of the cooperative canteen are not the employees of Reserve Bank of India. The Hon'ble Supreme Court has also given its finding in Employees Cooperative Canteen v. Reserve Bank of India, AIR 1996 SC 1241 that the employees of the canteen are not the employees of the bank. The reference is bad in law as the issue has already been settled by the decision of the Hon'ble Supreme Court and thus the reference is barred by the principles of *res judicata*. It has been further submitted that the bank has never inflicted any punishment against any of the persons under reference. The dispute is between the employees of the canteen and its management and the bank is in no way connected with the same.

5. The Reserve Bank Employees Cooperative Canteen Ltd. has also filed its written statement against the statement of claim filed by the two unions stating therein that the canteen is a cooperative society registered under the West Bengal Cooperative Societies Act. Hence any dispute between the canteen and its workers or union is not within the jurisdiction of the Central Government Industrial Tribunal as the state of West Bengal is the competent authority. The employees of answering canteen had been given ample opportunity in the disciplinary proceedings and after holding thorough disciplinary proceeding, order of punishment was passed. The dismissed employees were entitled for admissible dues. Therefore, after their dismissal the dues were offered to them, but they choose not to receive the same. The Assistant Labour Commissioner (Central) II, Kolkata did not have any authority to prevent the management of the canteen from initiating any disciplinary proceeding against its employees. The Assistant Labour Commissioner (Central) – II, Kolkata is not the competent authority to adjudicate upon the disputes between the said canteen and its employees as the canteen is registered under the West Bengal Cooperative Societies Act, 1940. There was no negligence or denial on the part of the answering canteen to comply with the statutory provisions of Section 33 of the Act of 1947.

6. The two unions also filed their rejoinders against the written statement filed by the Reserve Bank of India as well as the canteen refuting the allegations made in the written statements and asserting that the reference is neither barred by *res judicata* or limitation and also that there exists employer – employee relationship between the concerned workmen and the Reserve Bank of India. It is also denied by them that the said canteen is a cooperative society registered under the West Bengal Cooperative Societies Act, 1940.

7. After submission of pleadings by the parties, the Government of India had issued a fresh order of reference of even number dated 22.01.2014 amending the schedule to the reference in following words—

> *"Whether the action of the management of Reserve Bank Employees Co-op. Canteen Ltd. in terminating the services of S/Shri Bipad Bhanjan Sarkar, Arun Kumar Das, Amal Kr. Dey and Nipu Das is justified? If not, what relief the workmen concerned are entitled to?"*

8. It is material to note here that neither of the parties adduced any oral evidence in the case and the documents filed by the parties were exhibited by their mutual consent.

9. I have heard the authorized representative of the union as well as Reserve Bank of India. Nobody came forward to submit argument on behalf of the said canteen.

10. The authorized representative of the union has submitted that the persons under reference were employed through canteen of the Reserve Bank of India, therefore, they should be treated as employees of the bank. Contrary to it the bank has submitted that there exists no relationship of employer and employee. The persons under reference were employees of the canteen which is a registered cooperative society under the West Bengal Cooperative Societies Act, 1940. The bank has also submitted that since there is no employer and employee relationship the reference against the bank is not maintainable.

11. Now the question which falls for consideration is relationship of employer and employee between the concerned persons and the bank. In Management of **M/s. Puri Arban Cooperative Bank** v. **Madhusudan Sahu**, 1992 (2) SCR 977 it has been held that the industrial law revolves on the axis of master and servant relationship and the *prima facie* test of relationship of master and servant is the existence of the right in the master to supervise and control the work done by the servant, not only in the manner of directing what work the servant is to do, but also the manner in which he shall do his work. Thus, right to supervise and control the work of servant is the test for existence of relationship.

12. According to the bank benefit of canteen facility is extended by the bank to its staff as a measure of welfare. There is no obligation for the bank to run the canteen. Though financial subsidy is provided to the canteen, but the bank does not supervise the work or performance of the staff employed by the canteen management. The bank has no right to take any disciplinary action against the staff of the canteen. Therefore, it has been contended that the staff of the canteen are not employees of the bank. It is further submitted that the issue as to whether the Reserve Bank of India is the employer of the canteen staff has already been settled by the Hon'ble Apex Court in **Employers in relation to the management of Reserve Bank of India** v. **Their workmen**, AIR 1996 SC 1241. In this case the Reserve Bank of India was running canteen through cooperative society at Byculla in Mumbai in which 25 workmen were working. One of the employees of the bank who was a member of the managing committee of the society was relieved of his work for the whole day to look after or supervise the work of the canteen. The bank used to reimburse the society charges incurred for getting license under the Shops and Establishment Act. Even prior permission of the bank was required to increase the strength of the canteen employees. After a dispute having been arisen between the staff and the cooperative canteen, the matter was referred to the Industrial Tribunal where the point at issue between the parties was whether the persons in various canteens were employees of the Reserve Bank of India? The plea of the union on behalf of the workmen was that the bank was under statutory obligation to provide canteen facility to the employees and the same was being done through agencies, such as implementation committee, cooperative society and contractor instead of the bank doing it on its own by employing persons directly. It was further contended that the entire economic control was with the bank and so the workers employed in all these canteens, whether by cooperative societies or by contractors were entitled for absorption by the bank. The bank claimed the canteens were in the nature of clubs, management of the bank was not responsible for employment of persons in the canteens. They were employed by the cooperative societies or by the contractors. Bank merely provided the facility. Thus the facts of the above case are similar to the present case. In the instant case also the bank has contended that it has no supervisory control over the staff of the canteen. Only economic subsidy has been provided to the canteen. After considering the facts of the case and various case laws as decided by the Hon'ble Supreme Court in the past it was held that the staff of the canteens were not entitled for absorption in the service of the bank as there existed no relationship of employer and employee between the staff of the canteens and the bank. The relevant portion of the judgment may be extracted as below –

> *"…….. On the facts of this case, in the absence of any statutory or other legal obligation and in the absence of any right in the Bank to supervise and control the work or the details thereof in any manner regarding the canteen workers employed in the three types of canteens, it cannot be said that the relationship of master and servant existed between the Bank and the various persons employed in three types of canteens. 166 persons mentioned in the list attached to the reference are not workmen of the Reserve Bank of India and that they are not comparable employees employed in the officers' lounge. Therefore, the demand for regularization is unsustainable and they are not entitled to any relief……"*

13. Thus the matter has been set at rest by the above judgment of the Hon'ble Apex Court. No case law has been cited by the unions to substantiate their stand, instead they have contended that the Reserve Bank of India has issued a circular to all its offices including Kolkata Office informing that the settlement between the management of the bank and All India Reserve Bank Workers' Federation has been reached on "Revised scheme on switch over and recruitment" wherein it is provided that the canteens run by "implementation committees" and "staff cooperative societies" in its all offices would be closed and staff attached to such canteens on the date of such closure would be absorbed as maintenance staff in the bank. Therefore, the persons concerned are entitled to be absorbed in the bank. The circular dated 27th December, 2013 containing memorandum of settlement between the bank and the All India Reserve Bank Workers' Federation has been placed on record which shows that after deliberation between the management and the federation, a settlement had been reached in the year 2013. According to the settlement the canteens managed by implementation committees, and staff cooperative societies would be closed down during the period 1st January, 2014 to 31st January, 2014 and the staff attached to these canteens were expected to resign from the services of the canteens whereupon their dues would be settled by the implementation committees and staff cooperative societies. It was also provided in the settlement that the regular staff who were attached to the canteens as on 1st January, 2013 would give an option for being

absorbed in the services of the bank as part time maintenance attendants. A switchover scheme was also framed in the settlement according to which switchover from the category of maintenance attendant and catering attendant to the category of office attendant was agreed upon. The offices were directed to invite applications from all the eligible maintenance attendants and catering attendants for switchover to the cadre of office attendant depending upon the number of vacancies in the category of office attendant. It is also provided that the selection of the office attendants would be through a process of interview and screening of service record by the committee of officers and decision of the bank with regard to switchover would be final. Thus on the basis of the above circular it has been contended on behalf of the unions that post passing of the judgment of the Hon'ble Apex Court the entire issue was reconsidered and accordingly a dispute was referred to Central Govt. Industrial Tribunal No.2, Mumbai for adjudication of the issue which was dismissed by the Tribunal on the basis of above settlement reached between the bank and All India Reserve Bank Workers' Federation and the decision passed by Central Govt. Industrial Tribunal No.2, Mumbai would cover the present dispute also on the basis of which the employees under reference are entitled for absorption in the service of the bank.

14. But, I do not find any substance in the submissions made by the unions. Firstly, there had been no adjudication by the Tribunal on merit but on the basis of settlement the reference was dismissed by the Tribunal. Secondly, the above settlement itself shows that at the time of closure of canteens the staff of the canteens were asked to resign from the service of the cooperative canteen and thereafter to give an option for absorption in the service of the bank as part time maintenance attendants. Only those staff were entitled for absorption as part time maintenance attendants who had given an option for the same. So far as the switchover scheme is concerned, switchover is provided on the basis of selection process conducted by the bank. It is material to note that the so called settlement and switchover scheme came into effect in the year 2013 and the persons concerned were already dismissed from the service of the canteen on 18th March, 2005. Thus the persons under reference cannot claim benefit of so called settlement. The settlement itself provides that only regular staff who were attached to respective canteens as on 1st January, 2013 and were in active service of the canteens on the date of closure of the canteens shall be entitled to give their option for absorption in the service of the bank as part time maintenance attendants. Since the persons have already been dismissed much before the closure of canteens or entering into the settlement, they cannot claim benefit of the settlement. Hence the submissions of the unions do not bear any substance and the decision of the Hon'ble Supreme Court in **Employers in relation to Reserve Bank of India** (supra) still holds good and the staff of the canteen cannot be held to be staff of the bank. It is the cooperative canteen which is the employer of the concerned workmen.

15. It has been contended by the bank that the canteen is a cooperative society registered under the West Bengal Cooperative Societies Act, 1940, therefore, Central Government has no jurisdiction to refer the dispute to this Tribunal as the appropriate Government in this regard is the State Government. Section 2(a) of the Act of 1947 defines appropriate Government according to which in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by railway company or concerning any such controlled industry as specified in this behalf by the Central Government or in relation to industrial dispute concerning specified industries, Central Government is the appropriate Government and in relation to any other dispute it is the State Government which can be called appropriate Government. Obviously the cooperative society is not an industry carried on by or under the authority of the Central Government, nor a controlled industry. It is also not included in the list of specified industries as given in Section 2(a)(i) of the Act of 1947. Therefore, Central Government cannot be said to be appropriate Government in relation to present industrial dispute. In view of above, I have no hesitation to hold that it is State Government which has jurisdiction to refer the dispute. The Central Government does not have jurisdiction. Therefore, the reference made by the Central Government is bad in eye of law and therefore, it is not maintainable.

16. Assuming that the reference is maintainable in this Tribunal, it is material to note that the services of the persons concerned have been dismissed by the Reserve Bank Employees Cooperative Canteen Ltd. after enquiry conducted on the basis of chargesheets. Copies of chargesheets are on record from which it is apparent that the persons concerned were charged for using abusive languages, threatening the Chairman and trying to assault him physically. The allegation of making gherao of the Chairman is also one of the charges. It is not disputed by the persons concerned that they were

given copy of the chargesheets as they have clearly mentioned in their statement of claim that they had sent their replies to the Enquiry Officer. The enquiry had proceeded *ex parte* in absence of these employees. Nothing has been said by the unions against the procedure of enquiry, opportunity of hearing or about enquiry report. They have just mentioned that despite instruction by the Assistant Labour Commissioner (Central), Kolkata, the Enquiry Officer proceeded ex parte against these employees. It is not disputed that these employees had not appeared before the Enquiry Officer though they had full information of the enquiry. Abstaining from the enquiry was the fault of the employees concerned for which the Enquiry Officer cannot be said to be biased or any procedural fault has been committed by him. From the perusal of record it is evident that the unions had not adduced any oral evidence to challenge the enquiry. Hence the enquiry cannot be said to be illegal or invalid. The unions have also not challenged the merit of punishment, instead they have contended that the employer has violated the provisions of Section 33 of the Act of 1947. Section 33 of the Act of 1947 deals with prohibition in change in condition of service during pendency of proceeding and if any service condition is changed during pendency of proceeding, complaint may be filed under Section 33A of the Act of 1947. Whether service condition of the persons under reference were changed or not, it is beyond the scope of this reference. The reference has been made to this Tribunal only with regard to the action of the management of the canteen in terminating the services of the persons concerned. Hence this Tribunal is not to examine the factum of *change* in service condition of the persons concerned.

17. In view of above, I come to the conclusion that though the reference is not maintainable for the reasons mentioned hereinbefore, however, even for the sake of argument if maintainable, then also the action of the management of Reserve Bank Employees Co-operative Canteen Ltd. in terminating the services of Shri Bipad Bhanjan Sarkar, Shri Arun Kumar Das, Shri Amal Kumar Day and Shri Nipu Das cannot be said to be illegal and unjustified for the reasons stated above.

18. Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,
The 30th September, 2019

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